TEXAS REGISTER

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Artist: *Dayana Zendejas*

8th Grade

Williams Middle School

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PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

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 record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinion

DM-466(RQ-1060). Request from the Honorable David Sibley, Chair, Senate Committee on Economic Development, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning Constitutionality of §47.01(4)(B), Penal Code, which excepts certain types of electronic contrivances from the definition of "gambling device," and related questions.

S U M M A R Y. The amended definition of "gambling device" in paragraph (B) of §47.01(4) of the Penal Code invalidly authorizes the operation of certain "lotteries" proscribed by Texas Constitution, Article III, §47. The Lottery Commission has statutory and rulemaking authority to consider the conduct or activities of an applicant or licensee with respect to gambling. Additionally, the Alcoholic Beverage Commission has rulemaking and statutory authority to regulate permittees and licensees who have been found, after proper notice and a hearing, to have engaged in a gambling offense as defined in the Penal Code.

TRD-9801266

Request for Opinions

RQ-1062. Request from Ms. Linda Cloud, Executive Director, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, concerning Promotional activities for the state lottery at events where alcohol is sold.

RQ-1063. Request from the Honorable Charles R. Matthews, Chair, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, concerning authority of the Railroad Commission with regard to refund requests for LPG delivery fees.

RQ-1064. Request from the Honorable Judith Zaffirini, Chair, Health and Human Services, Texas Senate, P.O. Box 12068, Austin, Texas 78711, concerning Whether an appraisal district may reimburse the attorney fees of its chief appraiser in a prosecution for official misconduct.

RQ-1065. Request from the Honorable Robert T. Jarvis, County Attorney, Grayson County Justice Center, Suite 116A, Sherman, Texas 75090, authority of a chief of police to strip an officer of his seniority in a disciplinary action.

RQ-1066. Request from the Honorable Richard B. Townsend, County and District Attorney, 76th and 276 Judicial Districts, 500 Broadnax Street, Daingerfield, Texas 75638, concerning whether an interest fee should be retroactively deducted from trust accounts held by a county clerk.

RQ-1067. Request from the Honorable Michael P. Fleming, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, concerning authority of the Harris County Hospital District to expend funds for the temporary housing of visiting army medical personnel.

RQ-1068. Request from the Honorable John Vance, Dallas County District Attorney, 411 Elm, Fifth Floor, Dallas, Texas 75202, concerning authority of commissioners court to provide economic development funds based on a percentage of additional property tax revenues generated by the development.

RQ-1069. Request from Ms. Linda Cloud, Executive Director, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, concerning authority of the Texas Lottery Commission to establish a priority of payments.

TRD-9801267

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XV. Health and Human Services Commission

Chapter 355. Medicaid Managed Care

Subchapter G. Telemedicine Services

1 TAC §355.7001

The Health and Human Services Commission proposes new §355.7001, concerning the reimbursement for telemedicine services for the Medicaid Program. House Bill 2386 and House Bill 2017 directed the Health and Human Services Commission to establish a system for reimbursing providers of services performed using telemedicine. The new Subchapter G, which contains the new section §355.7001, sets forth definitions related to telemedicine in §355.7001(a). The new §355.7001(b) establishes reimbursement for the attending provider for evaluation and management services and for the consulting provider for consultation services in accordance with existing Medicaid reimbursement methodology. It also stipulates that providers seeking reimbursement for telemedicine services must adhere to reimbursement and medical policies adopted by the Texas Department of Health for telemedicine services. This new section provides definitions, a description of services approved for reimbursement, and requirements of providers claiming reimbursement for services performed using telemedicine.

Mr. Steve Svadlenak, Director of Medicaid Reimbursement, has determined that for the first five-year period the section is in effect, there will be no net fiscal implications as a result of administering the new section. The use of telemedicine will result in an increase in expenditures due to the reimbursement for attending providers but will also result in a decrease in expenditures for medical transportation costs. Savings may also result because of earlier interventions that telemedicine may effectively provide by allowing clients in rural and medically underserved areas to access services more quickly and conveniently. The anticipated use of telemedicine is unknown; telemedicine networks are only beginning to be developed in the state. Providers must also cover hardware, software, and transmission costs. There will be no fiscal impact for local governments.

Mr. Svadlenak has also determined that for the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved access to health care services for eligible recipients. There will be no costs to small businesses or persons complying with the section as proposed. There will be no impact on local employment.

Comments may be submitted to Linda K. Wertz at the Texas Health and Human Services Commission, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-6517. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public hearing on the proposed sections will be held at 9:00 A.M. on February 19, 1998, in the HHSC Public Hearing Room located in the Brown Heatley Building at 4900 North Lamar Boulevard, Austin, Texas. Parking will be available at the Texas Department of Human Services complex, 701 West 51st Street.

The new rule is proposed under the Texas Government Code, Chapter 531, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commissioner's duties under Chapter 531; and under Texas Government Code, §531.021, which provides the commission with the authority to administer federal medical assistance funds.

The new rule implements Government Code, §531.021 and Human Resources Code, §§32.001-32.047.

§355.7001. Telemedicine Services.

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

(1) Telemedicine - A method of health care service delivery used to facilitate medical consultations by physicians to health care providers in rural or underserved areas for purposes of patient diagnosis or treatment that require advanced telecommunications technologies, including interactive video consultation, teleradiology, and telepathology.

(2) Rural - Area defined as a county with a population of less than 50,000.

(3) Underserved - Area that meets the definition of Medically Underserved Area (MUA) or Medically Underserved Population (MUP) by the U.S. Department of Health and Human Services.

(4) Hub Site Provider - A physician at an accredited medical school, or a physician at one of the following entities affiliated with an accredited medical school: hospitals, teaching hospitals, tertiary centers, or health clinics. The hub site physician will provide consultation and diagnosis, and may develop the patient's plan of care and treatment.

(5) Remote Site Provider - A health professional, such as a physician or advanced nurse practitioner, that is able to independently bill the Medicaid Program, or a Federally Qualified Health Center or Rural Health Clinic. Remote site providers must be located in rural or underserved areas. The remote site provider is responsible for carrying out or coordinating the plan of care and treatment after consulting with the hub site provider.

(b) Reimbursement for Services Performed Using Telemedicine

(1) Hub site providers can bill for consultation services provided using telemedicine. Remote site providers can bill for evaluation and management services provided using telemedicine.

(2) Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology.

(3) Providers seeking reimbursement for telemedicine services must provide and bill for the service in the manner prescribed by the Texas Department of Health.

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 January 26, 1998.

TRD-9801122
Marina Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 424–6576

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter O. Rulemaking

16 TAC §§22.281, 22.282, 22.284

The Public Utility Commission of Texas proposes amendments to §22.281, relating to Initiation of Rulemaking; §22.282, relating to Notice and Public Participation in Rulemaking Procedures; and §22.284, relating to Informal Information Gathering. The proposed amendments to §22.281, will remove the reference to the position of secretary of the commission in subsection (a)(2), as this function is no longer performed by the secretary, and correct references to *Texas Register* procedures. The amendment to subsection (b) will clarify commission procedures. The proposed amendments to §22.282, will provide the commission with more flexibility in rulemaking procedures; ensure that public hearings are requested in a timely manner in order to allow the commission to fully review and consider all public comment; and conform subsection (e) with §22.71(h)(1) of this title (relating to Filing of Pleadings and Other Materials). The proposed amendment to §22.284 is to clarify commission policy. Project Number 18484 has been assigned to these proposed amendments.

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

Ms. Mueller also has determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be more clearly stated commission procedural requirements and ensuring that the commission receives all public comment in time to fully consider it in the rulemaking process. There will be no effect on small businesses as result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The Appropriations Act of 1997, HB 1, Article IX, Section 167 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting these rules continues to exist in considering these proposed amendments. All comments should refer to Project Number 18484.

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

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

§22.281. Initiation of Rulemaking.

(a) Petition for Rulemaking. Any interested person may petition the commission requesting the adoption of a new rule or the amendment of an existing rule.

(1) (No change.)

(2) Upon receipt of a petition for rulemaking, the [~~secretary of the~~] commission shall submit a notice for publication in the "In Addition" [~~miscellaneous documents~~] section of the *Texas*

Register. The notice shall include a summary of the petition, the name of the individual, organization or entity that submitted the petition, and notification that a copy of the petition will be available for review and copying in the commission's central records. Comments on the petition shall be due three weeks from the date of publication of the notice. Failure to publish a notice of a petition for rulemaking in the *Texas Register* shall not invalidate any commission action on the petition for rulemaking.

(3) (No change.)

(b) Commission Initiated Rulemaking. The commission may initiate rulemaking proceedings on its own motion [~~or on the motion of the commission general counsel~~]. Nothing in this section shall preclude the [~~commission general counsel or~~] commission staff from consideration or development of new rules or amendments to existing rules without express direction from the commission.

§22.282. Notice and Public Participation in Rulemaking Procedures.

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

(c) Public Comments. Prior to the adoption of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments in writing. Written comments must be filed within 30 days of the date the proposed rule is published in the *Texas Register* unless the commission establishes a different [~~later~~] date for submission of comments. The commission may also establish a schedule for reply comments if it determines that additional comments would be appropriate or helpful in reaching a decision on the proposed rule.

(d) Public Hearing. The commission may schedule workshops or public hearings on the proposed rule. An [~~In the case of substantive rules,~~] opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The request for public hearing must be made no later than 30 days after the date the proposed rule is published in the Texas Register, unless the commission establishes a different date for requesting a public hearing.

(e) Staff Recommendation. Staff's final recommendation shall be submitted to the commission and filed in central records at least six [~~seven~~] days prior to the date on which the commission is scheduled to consider the matter, unless some other date is specified by the commission. Staff will notify all persons who have filed comments concerning the proposed rule of the filing of staff's final recommendation.

(f) Final Adoption. [~~During the Open Meeting at which the commission considers the proposed rule for final action, the commission may allow interested persons to present oral comments in response to the staff's final recommendation.~~] Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn.

§22.284. Informal Information Gathering.

(a) The commission, or [~~the general counsel, and~~] the commission staff may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons concerning a contemplated rulemaking.

(b) (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 January 20, 1998.

TRD-9800862
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 936–7308

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TITLE 22. EXAMINING BOARDS

Part XVII. Plumbing Examiners

Chapter 365. Renewals

22 TAC §365.5

The Texas State Board of Plumbing Examiners proposes an amendment to §365.5. This section specifies that a medical gas license holder must take at least two additional hours of medical gas continuing education to renew their medical gas endorsement. The amendment states that individuals with a medical gas endorsement must take Board approved continuing education within the three-year period of their medical gas endorsement and that the license holder may not count the same continuing education class twice towards meeting the requirements for renewal of the medical gas endorsement.

Jim Fowler, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Fowler also has determined that each year of the first five years the rule is in effect the change in public benefit will be a higher quality of plumbers performing medical gas work. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments may be submitted to Gilbert Kissling, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The amendment to §365.5 is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-101, §5(a) and §12B (Vernon Supp. 1998).

No other statute, article, or code is affected by this proposed amendment. The proposed amendment has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

§365.5. Renewals.

(a)-(e) (No change.)

(f) Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing education class within the three-year period [~~take at least two additional classroom hours of continuing education within the third year~~] of the endorsement [~~period~~]. The [~~additional~~] classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99C, Standard on Gas and Vacuum Systems, and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing education class twice towards meeting the continuing

education requirements for renewal of the medical gas endorsement on a plumbing license [~~NFPA99C and the changes therein~~].

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 January 23, 1998.

TRD-9801063
Robert L. Maxwell
Chief of Field Services/Investigations
Plumbing Examiners
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 458–2145, Ext. 233

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

22 TAC §501.47

The Texas State Board of Public Accountancy proposes an amendment to §501.47, concerning Firm Names.

The proposed amendment to §501.47 lists character or grade of service as being misleading if included in a firm's name when not based upon verifiable facts; states that if a firm name includes a geographic area or a non-owner firm employee's name it may be misleading or deceptive if full disclosure of relevant facts is not made; states that a firm name which implies special expertise is intended or likely to create false or unjustified expectations of favorable results; clarifies that limited liability partnerships and companies must include that as part of their firm names; and states that at least two licensees must be involved full time in the practice in order to use company, group or associates.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be increased disclosure and more accurate disclosure to the public through the firm name. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Amanda Birrell, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§501.47. Firm Names.

(a) No certificate or registration holder shall engage in the practice of public accountancy using a [~~professional or~~] firm name [~~or designation~~] that includes descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A [~~professional or~~] firm name [~~or designation~~] will be considered to be misleading if:

(1) the name contains a misrepresentation of facts;

(2) the name indicates character or grade of service which is not based upon verifiable facts;

(3) [~~(2)~~] the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts; the following are examples, but are not inclusive:

(A) the name contains a geographic area; and

(B) the firm name includes a non-owner firm employee.

(4) [~~(3)~~] the name is intended or likely to create false or unjustified expectations of favorable results;

(5) [~~(4)~~] the name implies special expertise;

(6) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;

(7) [~~(5)~~] the name of the firm that is incorporated does not include the words "corporation," "incorporated," "professional corporation," or "company," or in each case, an abbreviation thereof, as a part of the firm name; [~~and~~] the words "professional corporation," or "PC" are not included with the firm name each time it is used; and the name of a firm organized under the limited liability partnership rules does not include the words "professional limited liability company" or " professional limited liability partnership" as appropriate, or an abbreviation thereof as part of the firm name;

(8) [~~(6)~~] the name includes the designation "and company," "company," [~~or~~] "group,"[~~or~~] "associates" or "and associates" or abbreviations thereof or similar names implying more than one employed member of the firm unless there are at least two licensees involved full time in the practice;

(9) [~~(7)~~] the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof;

(10) [~~(9)~~] the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; or

(11) [~~(10)~~] the name contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

(c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

(d) The name of any former partner or former shareholder may not be used in a registered firm name during the period of sanction when the former partner or former shareholder has been prohibited from practicing public accountancy or prohibited from using the title "CPA" or "PA".

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 January 23, 1998.

TRD-9801104
William Treacy
Executive Director
Texas State Boad of Public Accountacy
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 305–7845

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Chapter 511. Certification of CPA

22 TAC §511.57

The Texas State Board of Public Accountancy proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The proposed amendment to §511.57 includes up to six semester hours of management information systems as an accounting core course and adds up to 12 hours of management information systems as another accounting course.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be the recognition that some courses being taken by applicants are important enough to be included in required courses. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Amanda Birrell, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§511.57. Definition of Accounting Courses.

The board will accept not fewer than 30 passing semester hours of accounting courses (without repeat), taken at a recognized educational institution shown on official transcripts, or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, of which 20 semester hours must be in core accounting courses, in the following subject areas:

(1) accounting core courses:

(A) intermediate accounting, advanced accounting;

(B) cost accounting;

(C) auditing, internal accounting control and evaluation;

(D) report writing (principally writing financial reports, internal control reports, and management letters);

(E) financial statement analysis;

(F) accounting theory;

(G) up to six semester hours of income tax;

(H) accounting for governmental and/or other nonprofit organizations; and

(I) up to six semester hours of accounting systems , including management information systems;

(2) other accounting courses:

(A) income tax accounting (not to exceed 12 semester hours, including hours in paragraph (1)(G) of this section);

(B) accounting systems, including management information systems (not to exceed 12 semester hours, including hours in paragraph (1)(I) of this section);

(C) [~~B~~] accounting consultation;

(D) [~~(C)~~] accounting for specialized businesses or industries (such as fiduciaries, banks, etc.);

(E) [~~(D)~~] an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(i) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(ii) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(iii) the internship is approved by the faculty advisor;

(iv) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(v) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(vi) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(vii) the student writes a paper demonstrating the knowledge gained in the internship; and

(viii) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(F) [~~(E)~~] any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under 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 January 23, 1998.

TRD-9801105
William Treacy
Executive Director

Texas State Board of Public Accountancy
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 305–7845

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Chapter 527. Quality Review

22 TAC §527.3

The Texas State Board of Public Accountancy proposes an amendment to §527.3, concerning Definitions.

The proposed amendment to § 527.3 adds "Special Reports" to the definitions. Special reports is listed under § 527.4 of this title (relating to Quality Review Program) as a type of practice or activity which would make one subject to Quality Review.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be an improved understanding of the applicability of the Quality Review Program. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Amanda Birrell, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law, and §15B, which authorizes the board to enact rules for the Quality Review Program.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15B.

§527.3. Definitions.

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

Special reports-Include reports issued in connection with the following:

(A) financial statements that are prepared in conformity with a comprehensive basis of accounting other than generally accepted accounting principles;

(B) specified elements, accounts, or items of a financial statement;

(C) compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements;

(D) financial presentations to comply with contractual agreements or regulatory provisions;

(E) financial information presented in prescribed forms or schedules that require a prescribed form of auditor's reports; and

(F) internal audits by a firm for a client or a governmental entity.

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 January 23, 1998.

TRD-9801108
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 305–7845

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development

Data Collection

25 TAC §§13.11, 13.13, 13.15, 13.17, 13.18, 13.19

The Texas Department of Health proposes amendments to §§13.11, 13.13, 13.15, 13.17, 13.18 and 13.19, concerning hospital financial and utilization reporting and the reporting of charity care and community benefits data from nonprofit hospitals. The amendments will implement Senate Bills 788 and 802, 75th Legislature, 1997, which amend the Health and Safety Code, Chapter 311, and will correct inconsistencies with the enabling legislation.

Section 13.11 revises the purpose of the rules to accurately reflect statutory responsibilities. Section 13.13 includes a reformat of the definition of "nonprofit hospitals" for clarity. Section 13.15 establishes an exemption to hospital financial and utilization reporting. Section 13.17 establishes additional nonprofit hospital reporting requirements for the annual report of the community benefits plan, revises the standards for the provision of charity care and community benefits, specifies and clarifies revised time lines for nonprofit hospital charity care and community benefits reporting, includes requirements for nonprofit hospitals to post charity care notices, expands the definition of "nonprofit hospital" for purposes of charity care and community benefits reporting, deletes a reporting exemption for nonprofit hospitals in a specified county, and provides revisions to existing rule language for clarification purposes. Section 13.18 revises the time frame for implementing compliance activities for hospitals failing to report financial and utilization data, incorporates language consistent with the statute for department implementation of noncompliance activities for hospitals failing to report, and provides revisions to existing rule language for clarification purposes. Section 13.19 corrects an inconsistency with the enabling legislation regarding confidentiality of data.

Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, has determined that for the first five-year period the sections are in effect, there will be implications to state or local government as a result of administering or enforcing the sections as proposed. For fiscal years ending on or after January 1, 1998, public hospitals that are owned or operated by a political subdivision or municipal corporation of the state, including hospital districts and authorities, will be required to report

charity care and community benefits information. Based on a survey of several hospitals, it is estimated that the cost of implementing these rules will range from $1,200 to $10,000 for each public hospital. This estimate is based on direct costs associated with reporting under these sections. Additional indirect costs incurred such as computer system adaptations, the scope of a hospital's community benefit planning activities undertaken, and the development and implementation of revised charity care policies have not been identified and will vary from hospital to hospital. There is no measurable cost to the state of implementing this new data collection function; however, these activities will modify the workload for the department in terms of the collection, processing, and follow-up required to gather this information.

Ms. McDonald also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be the availability of information necessary to assess the level of charity care and community benefits provided by nonprofit and public hospitals. Economic costs to small businesses will occur if the "nonprofit hospital" is an investor-owned Medicaid disproportionate share hospital with fewer than 100 employees or less than $1 million in annual gross receipts. The adverse economic impact to these small businesses will be the cost of reporting under these sections since these hospitals have not previously been required to report. The cost will be an estimated $1,200 to $10,000 based on a survey of hospitals. The department does not expect these rules to cause the cost of compliance per employee, per hour of labor or per $100 of sales of services to be different between a small business or a large business; however, due to the possibility of a higher volume of charity care performed and reported by a large hospital, the total costs of compliance for a large hospital may be closer to the high end of the range and the total cost for a small hospital may be closer to the lower end. The costs to persons who are required to comply with the sections as proposed will be an estimated $1,200 to $10,000 for reporting. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Ann Henry, Bureau of State Health Data and Policy Analysis, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7261, Fax (512) 458-7344. Comments will be accepted for 30 days following the publication of this proposal in the *Texas Register*.

The amendments are authorized under the Health and Safety Code, §104.042(a) which authorizes the Board of Health to adopt rules relating to the collection and dissemination of data from health care facilities necessary to facilitate health planning and resource development; §311.032(b) which mandates the adoption of rules on the collection and reporting of hospital financial and utilization data; and §12.001 which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

These amendments affect the Health and Safety Code, Chapters 104 and 311.

§13.11. Purpose.

The purpose of the sections in this chapter is to implement Health and Safety Code, Chapter 104, Subchapter D, which requires the department to adopt rules covering the collection of data from health care facilities, such as hospitals, and the dissemination of data to facilitate health planning and resource development; Health and Safety Code, Chapter 311, Subchapters [~~Subchapter~~] C and D relating to [~~which requires the department to adopt rules covering~~] the collection and reporting of hospital financial [~~,~~] and utilization [~~, and patient discharge~~] data including data regarding the provision of levels of charity care by certain nonprofit hospitals, and the submission of an annual report of a community benefits plan by certain nonprofit hospitals.

§13.13. Definitions.

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

Nonprofit hospital–

(A) A hospital that is organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country and is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes. [~~A hospital that is eligible for tax-exempt bond financing; or exempt from state franchise, sales ad valorem, or other state or local taxes; and organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country. For purposes of these sections, a~~]

(B) A "nonprofit hospital" shall not include a hospital that:

(i) [~~(A)~~] is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) [~~(B)~~] does not receive payment for providing health care services to any inpatients or outpatients from any source including, but not limited to, the patient or any person legally obligated to support the patient, third-party payers, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) [~~(C)~~] does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services. [~~; or~~]

(C) [~~(D)~~] A "nonprofit hospital" does not include a hospital that is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a health professional shortage area.

§13.15. Survey Forms.

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

(d) A hospital may, but is not required to, provide the data required by subsection (b) of this section if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

§13.17. Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311.

(a) Annual report [~~Report~~] of the [~~annual~~] community benefits plan.

(1) [~~For reports required to be submitted to the Texas Department of Health~~

(department) on or after September 1, 1995, the] The annual report of the community benefits plan may be filed with the department on a hospital or hospital system basis.

(2) For fiscal years ending prior to January 1, 1998, a [~~A~~] nonprofit hospital or hospital system shall file an annual report of the community benefits plan, as required by Health and Safety Code, §311.046 as it existed prior to 1997 legislative amendments made by SB 788, with the department no later than 120 days after the hospital's or hospital system's fiscal year ends. For fiscal years ending on or after January 1, 1998, a nonprofit hospital or hospital system shall file an annual report of the community benefits plan with the department no later than April 30 of the following year.

(3) The nonprofit hospital's or hospital system's annual report of the community benefits plan must include, at a minimum: [~~,~~]

(A) the hospital's or hospital system's mission statement; [~~,~~]

(B) a disclosure of the health care needs of the community that were considered in developing the community benefits plan ; [~~, and~~]

(C) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(D) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and

(E) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in subparagraph (D) of this paragraph and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standard".

(4) For fiscal years ending prior to January 1, 1998, the nonprofit hospital's or hospital system's annual report of the community benefits plan must include the items listed in paragraphs (3)(A), (3)(B) and (3)(C) of this subsection. For fiscal years ending on or after January 1, 1998, the nonprofit hospital's or hospital system's annual report of the community benefits plan must include the items listed in paragraphs (3)(A)-(3)(E) of this subsection.

(5) For fiscal years ending on or after January 1, 1998, in addition to the annual report of the community benefits plan, a nonprofit hospital or hospital system shall file a completed worksheet as required by paragraph (3)(E) of this subsection no later than ten working days after the date the hospital or hospital system files its Medicare cost report.

(b) Annual statement of community benefits standard.

(1) [~~For statements required to be submitted to the department on or after September 1, 1995, the~~] The annual statement of community benefits standard may be filed with the department on a hospital or hospital system basis.

(2) For fiscal years ending prior to January 1, 1998, a [~~A~~] nonprofit hospital or hospital system shall file an annual statement with the department no later than 120 days after the [~~end of the~~] hospital's or hospital system's fiscal year ends [~~stating which of the standards for providing community benefits have been satisfied~~]. For fiscal years ending on or after January 1, 1998, a nonprofit hospital or hospital system is required to file an annual statement with the department no later than 120 days after the hospital's or hospital system's fiscal year ends; however, the department will accept the annual statement as part of the acceptance of the annual report of the community benefits plan. The annual statement filed under this subsection shall be based on the most recently completed and audited prior fiscal year of the hospital and shall state which of the standards for providing community benefits has been satisfied. A nonprofit hospital or hospital system may elect to provide community benefits according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system, and other factors that may be unique to the hospital or hospital system, such as the hospital's or hospital system's volume of Medicare and Medicaid patients;

[~~(B) charity care and government sponsored indigent health care are provided in an amount equal to at least 4.0% of the hospital's or hospital system's net patient revenue;~~]

(B) [~~(C)~~] charity care and government-sponsored indigent health care are provided in an amount equal to at least 100% of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax;

[~~(D) prior to January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least 5.0% of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least 3.0% of net patient revenue;~~] or

(C)[~~(E)~~] [~~beginning with the hospital's or hospital system's fiscal year starting after December 31, 1995,~~] charity care and community benefits are provided in a combined amount equal to at least 5.0% of the hospital's or hospital system's net patient revenue, provided that charity care and government sponsored indigent health care are provided in an amount equal to at least 4.0% of net patient revenue.

(3) For purposes of satisfying paragraph (2)(C) [~~(2)(E)~~] of this subsection, a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(4) A nonprofit hospital or hospital system shall use the form developed by the department for reporting under this section [~~and shall submit the form as part of the annual report of the community benefits plan~~].

(5) The department will accept written revisions of the annual statement of community benefits standard for 30 days after the filing date.

(6) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be deemed in compliance with these standards.

(7) A hospital that satisfies paragraphs (2)(A) or (6) of this subsection shall be excluded in determining a hospital system's compliance with the standards provided in paragraphs (2)(B) and (2)(C) [- ~~(E)~~] of this subsection.

(c) Reporting.

(1) The department shall notify nonprofit hospitals in writing that the annual report of a community benefits plan and the statement of community benefits standard must be filed in accordance with these rules [~~within 120 days after the end of the hospital's or hospital system's fiscal year. The notification will include a form to be used by nonprofit hospitals or hospital system to file the annual statement of community benefits standard~~].

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

(4) All hospitals or hospital systems shall report [~~to the department~~] any change of ownership [~~or control~~] which may effect the nonprofit status of the hospital or hospital system to the Bureau of State Health Data and Policy Analysis at the department.

(d) (No change.)

(e) Charity care notice. Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program.

(f) [~~(e)~~] Exemptions.

[~~(1) A nonprofit hospital that is located in a county with a population under 110,000 which has a hospital district created pursuant to Section 5, Article IX, Texas Constitution, and Chapter 136, Acts of the 55th Legislature, 1957, shall not be required to comply with one or more of the standards set forth in subsection (c) of this section. This exemption expires with a hospital's fiscal starting on or after September 1, 1996.~~]

[~~(2)~~] A nonprofit hospital is exempt from the reporting requirement in subsection (c) of this section if the hospital is located in a county with a population under 50,000 and in which the entire county or the population of the entire county has been designated as a "health professional shortage area" during the current or any previous fiscal year and has continued to maintain that designation.

(g) For purposes of this section only, a nonprofit hospital shall include a nonprofit hospital as defined in §13.13 of this title (relating to Definitions) and:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision of municipal corporation of the state, including a hospital district or authority.

§13.18. Noncompliance with Reporting Requirements.

(a) Data reporting.

[~~(1) A hospital that does not time submit requested data to the Texas Department of Health (department) according to the requirements and procedures established in these sections is subject to a civil penalty of not more than $500 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 104.~~]

(1) [~~(2)~~] If a hospital does not submit a completed survey form to the Texas Department of Health (department) [~~department~~] within the 60-day reporting period established in §13.15 of this title (relating to Survey Forms), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 104. The written notification will also state that the commissioner of health may [~~will~~] request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital fails to submit the requested data to the department within 30 days of the date the entity received [~~postmark of~~] the notification letter.

(B) If the department does not received the requested data from the non-responding hospital within the specified time frame, the commissioner of health may [~~will~~] notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital.

(2) A hospital that does not timely submit requested data to the department according to the requirements and procedures established in these sections is subject to a civil penalty of not more than $500 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 104.

(b) Community benefits plans.

(1) (No change.)

(2) If a nonprofit hospital or hospital system does not submit a report of the community benefits plan to the department within the [~~120-day~~] reporting period established in §13.17 of this title (relating to Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 311. The written notification will also state that the commissioner of health may [~~will~~] request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital or hospital system fails to submit the report to the department within ten days after receipt of the written notification letter.

(B) If the department does not receive the report of the community benefits plan from the non-responding hospital or hospital system within the specified time frame, the commissioner of health may [~~will~~] notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital or hospital system.

§13.19. Confidential Data.

(a) The following data received by the Texas Department of Health (department) from a [~~public or private~~] hospital is confidential under authority of the Health and Safety Code, Chapters 104 and 311:

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

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

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

Filed with the Office of the Secretary of State, on January 21, 1998.

TRD-9800978

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 458–7236

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Chapter 39. Primary Health Care Services Program

Medically Underserved Community-State Matching Incentive Program

25 TAC §§39.61–39.75

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

The Texas Department of Health (department) proposes the repeal of §§39.61-39.75, concerning the Medically Underserved Community-State Matching Incentive Program (MIP), through which the department allocates funds to qualified community groups in medically underserved areas to cover certain costs of establishing physicians' primary care practices. Specifically, the sections cover purpose and scope; define terms used in the rules; define eligibility criteria for contributing communities, participating physicians, and state designation as a medically underserved area; describe the procedures for applying for funds, prioritization of need among applicant communities and funding allocation; and provide specifications for related contracts, including requirements for community contribution of funds.

The repeal is required by Senate Bill 913, 75th Legislature, 1997, which directs the Texas Board of Health (board) to transfer its obligations, property, and rights as administrator of the MIP under Health and Safety Code, Chapter 46, to the Center for Rural Health Initiatives (Center) not later than September 1, 1998. The Center's executive board will adopt new rules to administer the MIP in compliance with Health and Safety Code, Chapter 106, as amended by Senate Bill 913.

Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of the repeal.

Mrs. McDonald also has determined that for each of the first five years the repeal is in effect, the public benefits anticipated are compliance with Senate Bill 913, 75th Legislature, 1997, and continuation of assistance to communities in medically underserved areas when the Center for Rural Health Initiatives begins to administer the MIP. There are no anticipated economic costs to small or large businesses or to persons who will be affected by the repeal. No effect on local employment is anticipated.

Comments on the proposed repeal may be submitted to Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7261. Comments will be accepted for 30 days following the date of publication of the proposed repeal in the *Texas Register.*

The repeal is required by Senate Bill 913, 75th Legislature, 1997, and proposed under Health and Safety Code §12.001(b), which provides the Texas Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The repeal of §§39.61-39.75 will affect Health and Safety Code, Chapter 106.

§39.61. Introduction.

§39.62. Definitions.

§39.63. Eligibility Criteria for a Contributing Community.

§39.64. Physician Eligibility Criteria.

§39.65. Eligibility Criteria for State Designation as a Medically Underserved Area or Community.

§39.66. Procedures To Apply for Funds.

§39.67. Application Requirements.

§39.68. Evaluation of Application.

§39.69. Contract Award.

§39.70. Methodology for Prioritizing Neediest Communities.

§39.71. Contribution Procedures.

§39.72. Contract.

§39.73. Funding Allocation Procedure.

§39.74. Breach of Contract.

§39.75. Reporting and Monitoring.

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 January 21, 1998.

TRD-9800977
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 458–7236

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Chapter 241. Shellfish Sanitation

Molluscan Shellfish

25 TAC §§241.50–241.100

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

The Texas Department of Health (department) proposes the repeal of existing §§241.50 - 241.100, and new §§241.50-241.67, concerning Texas molluscan shellfish. Specifically, these sections cover definitions; grounds and arrangements; sanitary controls; water supplies; storage areas; processing of molluscan shellfish; maintenance and cleaning; records and supervision guidelines which are provided by the new

federal *Shellfish Sanitation Model Ordinance*; and they also include requirements established by the U.S. Food and Drug Administration's Fish and Fishery Products Hazard Analysis and Critical Control Point (HACCP) regulations (Code of Federal Regulations, Title 21, Part 123). This action is necessary because of new federal requirements and recommendations. These rules are essential for the proper regulation of the molluscan shellfish industry.

Richard E. Thompson, Director, Seafood Safety Division, has determined that for each year of the first five-year-period the sections are in effect there will be no fiscal implications for state government as a result of implementing the sections. The current level of inspection will be reduced slightly to allow for the increased time and in-depth coverage of the HACCP inspections. All involved department staff have already participated in training. The effect on state government would be an increase in general revenue if administrative penalties are assessed. There will be no fiscal implications to local governments.

Mr. Thompson also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be better assurance that molluscan shellfish processed in or imported into Texas will be free of disease or other health hazards transmissible by these products. There is no anticipated economic cost to individuals or small businesses because the industry involved was already regulated very stringently under the National Shellfish Sanitation Program. These requirements reflect primarily changes in form rather than new requirements. All currently licensed shellfish dealers have already participated in training. There is no impact on local employment.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Seafood Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0215. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. Public hearings to receive comments on the proposed rules will be held on Monday, February 23, 1998, at 7:00 p.m. in the Galveston County Agriculture Extension Service Building, Dickinson, Texas, and on Tuesday, February 24, 1998, at 7:00 p.m. in the Calhoun County Agriculture Building at the fairgrounds on County Road 101, Port Lavaca, Texas.

The repeal is proposed under Health and Safety Code, §§436.112 and 12.001, which provides the Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal will affect Health and Safety Code, Chapter 436.

§241.50. Definitions.

§241.51. Growing Area Classification.

§241.52. Transplanting and Gathering for Depuration.

§241.53. Certification and Enforcement Procedures.

§241.54. Sources of Shellfish.

§241.55. Harvesting and Handling Shellstock.

§241.56. Shellstock Shipping.

§241.57. Plant Location, Grounds, and Arrangements.

§241.58. Dry Storage and Protection of Shellstock.

§241.59. Floors, Walls, and Ceilings.

§241.60. Insect and Vermin Control Measures.

§241.61. Lighting.

§241.62. Heating, Cooling, and Ventilation.

§241.63. Water Supply.

§241.64. Plumbing, Sewage, and Related Facilities.

§241.65. Poisonous or Toxic Materials.

§241.66. Construction of Shucking Benches, Stools, Runs, and Tables.

§241.67. Construction of Utensils and Equipment.

§241.68. General Maintenance and Cleanliness.

§241.69. Cleaning and Sanitizing Equipment and Utensils.

§241.70. Shucking of Shellfish.

§241.71. Shell and Waste Disposal.

§241.72. Single Service Containers.

§241.73. Packing of Shucked Shellfish.

§241.74. Labeling Shucked Shellfish.

§241.75. Refrigeration and Shipping of Shucked Shellfish.

§241.76. Ice.

§241.77. Records.

§241.78. Employee Health.

§241.79. Supervision.

§241.80. Personal Cleanliness.

§241.81. Education and Training.

§241.82. Repacking Shucking Shellfish.

§241.83. Wet Storage.

§241.84. Heat Shock.

§241.85. Depuration Certificate Requirements.

§241.86. Depuration Gathering Permit.

§241.87. Depuration Tank Design and Construction.

§241.88. Depuration Plant Sanitation.

§241.89. Depuration Plumbing, Water Supply, and Related Facilities.

§241.90. Depuration Construction Requirements.

§241.91. Depuration Laboratory Procedures.

§241.92. Depuration Plant Operation.

§241.93. Depuration Shellfish Sampling Procedures.

§241.94. Depuration Process Water Control - Sampling.

§241.95. Depuration Treatment Water - Standards.

§241.96. Depuration Shellfish Meat Standards.

§241.97. Depuration Ultraviolet (UV) Unit.

§241.98. Depuration Shellstock Storage.

§241.99. Tagging and Release of Depurated Shellfish.

§241.100. Depuration Records.

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

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

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25 TAC §§241.50–241.67

The new sections are proposed under Health and Safety Code, §§436.112 and 12.001, which provides the Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections will affect Health and Safety Code, Chapter 436.

§241.50. Definitions.

The following words and terms, when used in this chapter of this title (relating to Molluscan Shellfish), shall have the following meaning unless the context clearly indicates otherwise.

Air gap - The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of that receptacle.

Approved area - A classification used to identify a harvest area where harvest for direct marketing is allowed.

Approved source - A source of molluscan shellfish acceptable to the director (commissioner of health).

Aquaculture - The cultivation of seed in natural or artificial growing or harvest areas, or the cultivation of molluscan shell stock other than seed in harvest areas.

Assure - To make certain.

Authorized agent - An employee of the department who is designated by the director (commissioner of health) to enforce provisions of this chapter of this title (relating to Molluscan Shellfish).

Backflow - The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply from any source or sources other than the intended source.

Back siphonage - The flowing back of used, contaminated or polluted water from a plumbing fixture, vessel or other source into potable water supply pipes because of negative pressure in the water supply pipes.

Blower - A receptacle for washing shucked molluscan shellfish which uses forced air as a means of agitation.

Certificate (molluscan shellfish certificate of compliance) - A numbered document issued by the Seafood Safety Division which authorizes a dealer to process molluscan shellfish for sale.

Certification or certify - The issuance of a numbered certificate to a person for a particular activity or group of activities that indicates:

(A) permission from the department to conduct the activity; and

(B) initial compliance with the requirements of these rules in this chapter of this title (relating to Molluscan Shellfish).

Certification number - The unique identification number issued by the department to each dealer for each location. Each certification number shall consist of a one to five digit Arabic number preceded by the two letter State abbreviation and followed by a two letter abbreviation for the type of activity or activities the dealer is qualified to perform in accordance with the following terms:

(A) Shellstock shipper (SS);

(B) Shucker/packer (SP);

(C) Repacker (RP);

(D) Depuration processor (DP).

Certified location - A plant or place of business which has been inspected by the Seafood Safety Division and for which a molluscan shellfish certificate of compliance has been issued.

Coliform group - All of the aerobic and facultative anaerobic, gram negative, nonspore forming, rod shaped bacilli which ferment lactose broth with gas formation within 48 hours at 95 degrees Fahrenheit (35 degrees + 0.5 degrees Centigrade).

Commingle or commingling - The act of combining different lots of molluscan shell stock or shucked molluscan shellfish.

Commissioner - The commissioner of health for the State of Texas.

Compliance schedule - A written schedule that provides a correction time period to eliminate key and other deficiencies.

Conditionally approved area - A classification used to identify a harvest area which meets the criteria for the approved classification except under certain conditions described in a management plan established by the SSD.

Conditionally restricted area - A classification used to identify a harvest area which meets the criteria for the restricted classification except under certain conditions described in a management plan established by the SSD.

Container - The physical material in contact with or immediately surrounding molluscan shellfish that confines it into a single unit.

Corrosion resistant materials - Materials that maintain their original surface characteristics under normal exposure to the foods being contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

Critical Control Point (CCP) - A point, step or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated or reduced to acceptable levels.

Critical deficiency - A condition or practice which:

(A) results in the production of a product that is unwholesome; or

(B) presents a threat to the health or safety of the consumer.

Critical limit - The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.

Cross connection - An unprotected actual or potential connection between a potable water system and any source or system containing unapproved water or a substance that is not or cannot be approved as safe and potable. Examples include, bypass arrangements, jumper connection, removable sections, swivel or change over devices, or other devices through which backflow could occur.

Cull - To remove dead or unsafe molluscan shell stock from a lot of molluscan shell stock.

Dealer - A person to whom certification is issued for the activities of molluscan shell stock shipper, shucker-packer, repacker, or depuration processor.

Department - The Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, or its successor state agency, having the responsibility for the enforcement of laws concerning the safety of the food supply including molluscan shellfish growing area classification and certification of molluscan shellfish dealers.

Depletion - The removal, under the direct control of the Texas Parks and Wildlife Department, of all existing commercial quantities of market-size molluscan shellfish from a harvest area classified as prohibited.

Depuration or depurate - The process of reducing the level of bacteria and viruses that may be present in molluscan shellfish by using a controlled aquatic environment as the treatment process.

Depuration plant - A place where depuration of molluscan shellfish occurs.

Depuration Processor (DP) - A person who harvests or receives molluscan shell stock from harvest areas in the approved or conditionally approved, restricted, or conditionally restricted classification and submits such molluscan shell stock to an approved depuration process.

Direct marketing - The sale for human consumption of molluscan shellfish which:

(A) does not require depuration or relaying prior to sale; or

(B) has been subjected to depuration or relaying activities.

Director - The executive head (commissioner of health) of the Texas Department of Health.

Dry storage - The storage of molluscan shell stock out of water.

Durable material - Material with the ability to exist for several years without significant deterioration and able to withstand normal daily use associated with molluscan shellfish operations.

Easily cleanable - A surface which is:

(A) readily accessible; and

(B) is made of such materials, has a finish, and is so fabricated that residues may be effectively removed by normal cleaning methods.

Facility - A structure.

FDA - The United States Food and Drug Administration or its successor agency, the federal agency in which regulation of foods, including the Cooperative Shellfish Program, is vested.

Food contact surface - An equipment surface or utensil which normally comes into direct or indirect contact with shucked molluscan shellfish.

Food safety hazard - Any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

Gatherer - Person who takes molluscan shellfish by any means from a growing area designated by the commissioner for delivery to a depuration plant.

GLO - The Texas General Land Office, 1700 North Congress, Austin, Texas, 78701, or its successor agency, the state agency having the responsibility for the enforcement of laws concerning all state lands, including leasing of wetland bottom for private oyster leases.

Growing area - Any site which supports or could support the propagation of molluscan shell stock by natural or artificial means.

HACCP - Hazard Analysis Critical Control Point, a systematic, science-based approach used in food production as a means to assure food safety. The concept is built upon the seven principles identified by the National Advisory Committee on Microbiological Criteria for Foods(1992).

HACCP Plan - A written document that delineates the formal procedures that a dealer follows to implement the HACCP requirements as adopted by the Interstate Shellfish Sanitation Conference set forth in Code of Federal Regulations, Title 21, §123.6, as amended.

Harvest - The act of removing molluscan shell stock from growing or harvest areas and its placement on or in a manmade conveyance or other means of transport.

Harvest area - An area that contains commercial quantities of molluscan shell stock and may include aquaculture sites and facilities.

Harvester - A person who takes molluscan shell stock by any means from a harvest area.

Heat shock - The process of subjecting molluscan shell stock to any form of heat treatment prior to shucking, including steam, hot water or dry heat, to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the molluscan shellfish.

Includes or including - Includes or including by way of illustration and not by way of limitation.

ISSC - The Interstate Shellfish Sanitation Conference. The ISSC consists of agencies from molluscan shellfish producing and receiving states, FDA, the molluscan shellfish industry, and the National Marine Fisheries Service of the U.S. Department of Commerce.

Key deficiency - A condition or practice which may result in adulterated, decomposed, misbranded or unwholesome product.

Label - Any written, printed or graphic matter affixed to or appearing upon any package containing molluscan shellfish.

License - The document issued by the Texas Parks and Wildlife Department, under the Texas Parks and Wildlife Code, Chapter 47 or Chapter 76, which authorizes a person to harvest or transport molluscan shell stock for commercial sale.

Lot of molluscan shell stock - A single type of bulk molluscan shell stock or containers of molluscan shell stock of no more than one day's harvest from a single defined harvest area gathered by one or more harvesters.

Lot of molluscan shell stock for depuration - Molluscan shell stock harvested from a particular area during a single day's harvest and delivered to one depuration plant.

Lot of shucked molluscan shellfish - A collection of containers of no more than one day's shucked molluscan shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

Marina - Any water area with a structure (docks, basin, floating docks, etc.) which is:

(A) used for docking or otherwise mooring vessels; and

(B) constructed to provide temporary or permanent docking space for more than ten boats.

Marine Biotoxin - Any poisonous compound produced by marine microorganisms and accumulated by molluscan shell stock. Examples include *Alexandrium spp*. (*Proto gonyaulax* species), and *Gymnodinium breve* .

Market shellfish - Molluscan shellfish which are, may be, or have been harvested and/or prepared for sale for human consumption as a fresh or frozen product.

May - Discretionary and is not mandatory or required.

Molluscan shellfish - All species of:

(A) oysters, clams or mussels, whether:

(i) shucked or in the shell;

(ii) fresh or frozen; and

(iii) whole or in part.

(B) scallops in any form, except when the final product form is the adductor muscle only.

Monoculture - The culture of a single molluscan shellfish species.

MPN - Most probable number.

Open area - A molluscan shellfish growing area where the harvesting for sale, harvesting for transplant, or gathering for depuration of molluscan shellfish is allowed. An open area status may be placed on any one of the classified area designations except for a prohibited area.

Open water aquaculture - The cultivation of molluscan shellfish in natural molluscan shellfish harvest areas.

Other deficiency - A condition or practice that is not defined as critical or key, but is of a public health significance and, if left uncorrected, could result in a more serious violation.

Pack (packing) - All activities involved in placing molluscan shellfish in containers.

Person - Any individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind, government or governmental subdivision or agency, partnership, association, corporation or other legal entity.

Poisonous or deleterious substance - A toxic substance occurring naturally or added to the environment for which a regulatory tolerance limit or action level has been established in molluscan shellfish to protect public health.

Polyculture - The cultivation of:

(A) two or more species of molluscan shellfish; or

(B) molluscan shellfish with other species in a common environment.

Potable water - A water supply which is suitable for human consumption. Principal display panel - The part of a label that is most likely to be displayed, presented, shown or examined under customary conditions of retail sale.

Process batch - A quantity of molluscan shell stock used to fill each separate tank or a series of tanks supplied by a single process water system for a specified depuration cycle in a depuration activity.

Process water - The water used in the scheduled depuration process.

Prohibited area - A classification used to identify a harvest area where the harvest of molluscan shell stock for any purpose, except depletion or gathering of seed for aquaculture, is not permitted.

Repacker (RP) - Any person, other than the original certified shucker-packer, who repackages shucked molluscan shellfish into other containers.

Repacking molluscan shell stock - The practice of removing molluscan shell stock from containers and placing it into other containers.

Restricted area - A classification used to identify a harvest area where harvesting shall be by special license and the molluscan shell stock, following harvest, is subjected to a suitable and effective treatment process through transplanting or gathering for depuration.

Safe materials - Articles manufactured from or composed of materials that may not reasonably be expected to, directly or indirectly, become a component of or otherwise adversely affect the characteristics of any food.

Sanitation control record - Records that document the monitoring of sanitation practices and conditions.

Sanitize - To adequately treat food contact surfaces by a process that is effective in:

(A) destroying vegetative cells of microorganisms of public health significance;

(B) substantially reducing the numbers of other undesirable microorganisms; and

(C) not adversely affecting the product or its safety for the consumer.

Seed - Molluscan shell stock which is less than market size.

Sewage - Refuse liquids or waste matter, including hand sink drainage.

Sewer - An artificial, usually subterranean, conduit to carry off sewage and/or surface water.

Sewerage - The removal and disposal of sewage and surface water by sewers.

Shell stock - Live molluscan shellfish in the shell.

Shell stock packing - The process of placing molluscan shell stock into containers for introduction into commerce.

Shellstock Shipper (SS) - A dealer who grows, harvests, buys, or repacks and sells molluscan shell stock. They are not authorized to shuck molluscan shellfish nor to repack shucked molluscan shellfish. A shell stock shipper may also ship shucked molluscan shellfish.

Shucked shellfish - Molluscan shellfish, whole or in part, from which one or both shells have been removed.

Shucker/Packer (SP) - A person who shucks and packs molluscan shellfish. A shucker-packer may act as a shellstock shipper or may repack molluscan shellfish originating from other certified dealers.

SSD - The Seafood Safety Division of the Texas Department of Health to which responsibility to classify molluscan shellfish growing areas and to regulate harvesting, processing, and/or shipping of molluscan shellfish is delegated.

Take - Catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take.

TDA - The Texas Department of Agriculture, 1700 North Congress, Austin, Texas, 78701, or its successor state agency having responsibility for enforcement of laws concerning licensing of aquaculture.

TNRCC - The Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78758, or its successor state agency having the responsibility for the enforcement of laws concerning water supplies and discharges of water or wastewater in Texas.

TPWD - The Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, or its successor state agency having the responsibility for the enforcement of laws concerning harvesting and depletion of molluscan shellfish resources.

Transaction record - The form or forms used to document each purchase or sale of molluscan shellfish at the wholesale level, and includes molluscan shellfish harvest and sales records, ledgers, purchase records, invoices and bills of lading.

Transplant (transplanting) - To transfer molluscan shell stock from a harvest area classified as restricted or conditionally restricted or from a conditionally approved area in the closed status to a harvest area classified as approved or conditionally approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the molluscan shell stock by using the ambient environment as the treatment process.

Water closet - A toilet bowl and its accessories surrounded by walls or partitions.

Wet storage - The temporary storage, by a dealer, of molluscan shell stock from harvest areas in the approved classification or in the open status of the conditionally approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

§241.51. Growing Area Classification.

The authority conferred on the commissioner by the Health and Safety Code, §436.101 is delegated to the bureau chief of the Bureau of Food and Drug Safety or his/her designee under the provisions of the Health and Safety Code, §436.003(a). The bureau chief shall:

(1) designate coastal water (as defined in the rules of the Texas Parks and Wildlife Department, 31 Texas Administrative Code, Chapter 51) for the purposes of taking molluscan shellfish as:

(A) an approved area;

(B) a conditionally approved area;

(C) a restricted area;

(D) a conditionally restricted area; or

(E) a prohibited area.

(2) designate classified growing areas as open areas or closed areas.

§241.52. Shell Stock Transplanting and Gathering for Depuration.

(a) Any person who wants to transplant molluscan shell stock from a harvest area classified as conditionally approved, restricted, or conditionally restricted shall make application to the TPWD for a permit to transplant molluscan shell stock.

(b) No person may transplant molluscan shell stock without a valid transplant permit from the TPWD.

(c) Each person who transplants molluscan shell stock shall provide the following information to the department:

(1) the source of the molluscan shell stock;

(2) the quantity of molluscan shell stock;

(3) the destination private oyster lease of the molluscan shell stock; and

(4) the date the transplant permit expired or was canceled.

(d) No person shall harvest transplanted molluscan shell stock until the molluscan shell stock has been in waters meeting the approved area criteria for a minimum consecutive period of 14 days.

(e) Any person, firm, or corporation engaging wholly or part-time in the business of gathering molluscan shellfish from areas designated by the department for delivery to a controlled depuration plant shall be required to hold a current permit issued specifically for this purpose by the TPWD, with a copy in the files of the department.

(f) Permits for gathering for depuration shall be granted only subject to the following conditions.

(1) All gathering and transporting of molluscan shellfish for depuration must be accomplished between sunrise and sunset as set by the National Weather Service for that locale.

(2) All boats and vehicles used to gather or transport molluscan shellfish for depuration shall be conspicuously marked in a manner established by the TPWD. All boats or vehicles so marked shall be thoroughly cleaned and sanitized and the marking removed prior to use for harvesting or transporting treated molluscan shellfish or other molluscan shellfish approved for harvest or sale.

(3) Molluscan shellfish gathered for depuration shall not be containerized in any manner resembling normal sales of molluscan shell stock from approved harvest areas. Containers used for normal sales of molluscan shell stock from approved areas shall not be stored on any boat or vehicle used to gather or transport molluscan shellfish for depuration. Containers of untreated molluscan shell stock shall be tagged or labeled as NOT FOR HUMAN CONSUMPTION.

(4) A copy of the TPWD permit shall be kept on board the vessel at all times during gathering and transporting of molluscan shell stock for depuration.

(5) All gathering and transporting of molluscan shellfish for depuration shall be conducted under the immediate surveillance of a commissioned officer of the TPWD, or other commissioned officer as provided by law. The responsibility for obtaining this surveillance rests with the depuration plant owner or operator. A commissioned officer shall be present for every ten gatherers or gathering boats or for any portion of 10 gatherers or boats working for any single depuration plant. An officer shall not concurrently serve as surveillance officer for more than one depuration plant. Separate surveillance officers shall be present for gatherers from the same plant working concurrently in more than one geographic area. The surveillance officer shall have all molluscan shell stock under his or her control at all times during transport from the gathering area to the depuration plant. The surveillance officer shall prepare a report stating the gathering area(s), species, and quantity of molluscan shellfish gathered each day by each gatherer under his or her surveillance. One copy of the report shall accompany the molluscan shell stock to the depuration plant and be maintained in the plant files for not less than one year. One copy of the report shall be forwarded to the Texas Department of Health, Seafood Safety Division, 1100 West 49th Street, Austin, Texas 78756.

(6) All molluscan shellfish gathered under authority of a depuration permit shall be delivered only to the depuration plant specified in the permit, on the day gathered, and shall be depurated or disposed of as waste.

(7) Molluscan shellfish gathered for depuration shall be protected at all times during gathering and transporting to prevent contamination and undue stress.

(g) Vessels and all other equipment coming in contact with molluscan shell stock during handling or transport for transplant or depuration shall be thoroughly cleaned before the vessels or equipment are used to transport or handle molluscan shellfish for direct marketing.

§241.53. Molluscan Shellfish Aquaculture.

(a) The following activities are exempted from the requirements in this section:

(1) hatcheries;

(2) nursery products which do not exceed 10% of the market weight; and

(3) nursery products which are 6 months or more growing time from market size.

(b) Aquaculture encompasses both open water and land based monoculture and polyculture.

(c) Any person who performs open water aquaculture or operates an aquaculture facility to raise molluscan shellfish for human consumption shall obtain:

(1) a permit(s) or authorization from the department, GLO, TPWD, TDA, and/or TNRCC for the activity or for construction and functioning of his facility;

(2) a harvester's license; and

(3) certification as a dealer, where necessary.

(d) Molluscan shellfish aquaculture shall be practiced only in strict compliance with the provisions of the authorization issued by the department for the aquaculture activity. Authorization shall be based on the aquaculturist's written operational plan.

(e) Prior to beginning his activity, an aquaculturist shall obtain the permission of the department for use of his site and any construction.

(f) Water quality at any site used for open water or land based aquaculture shall meet the criteria for the approved, conditionally approved, restricted or conditionally restricted classification.

(g) Molluscan shellfish cultured in any open water or land based system meeting the criteria for the approved classification of a harvest area throughout the culture period may be immediately marketed.

(h) Any molluscan shellfish raised in aquaculture shall be subjected to relaying or depuration prior to direct marketing if the culture area or facility is located in or using water which is in:

(1) the closed status of the conditionally approved classification;

(2) the restricted classification; or

(3) the open status of the conditionally restricted classification.

(i) Only drugs sanctioned by the FDA may be used for molluscan shellfish treatment.

(j) Harvesting, processing, storage, and shipping requirements for molluscan shellfish raised in aquaculture shall be the same as the requirements for wild molluscan shellfish specified in this chapter of this title (relating to Molluscan Shellfish).

(k) Complete and accurate records shall be maintained for at least two years by the aquaculturist and shall include the:

(1) source of molluscan shellfish, including seed if the seed is from harvest areas which are not in the approved classification;

(2) dates of transplanting and harvest; and

(3) water source, its treatment method, if necessary, and its quality in land based systems.

(l) Seed may come from any growing area, or from any harvest area in any classification, provided that:

(1) the source of the seed is approved by the department;

(2) seed from growing areas or harvest areas in the restricted or prohibited classification has acceptable levels of poisonous or deleterious substances; and

(3) seed from growing areas or harvest areas in the prohibited classification is cultured for a minimum of six months.

§241.54. Land Based Aquaculture.

(a) Operational plan. Each land based aquaculture facility shall have a written operational plan. The plan shall be approved by the department prior to its implementation and shall include:

(1) a description of the design and activities of the culture facility;

(2) the specific site and boundaries in which molluscan shellfish culture activities will be conducted;

(3) the types and locations of any structures, including rafts, pens, cages, nets, tanks, ponds, or floats which will be placed in the waters;

(4) the species of molluscan shellfish to be cultured and harvested;

(5) if appropriate, the source and species of other organisms to be cultured in any polyculture systems;

(6) procedures to assure that no poisonous or deleterious substances are introduced into the activities;

(7) a program of sanitation, maintenance, and supervision to prevent contamination of the final molluscan shellfish products;

(8) a description of the water source, including the details of any water treatment process or method, if necessary;

(9) a program to maintain water quality, which includes collection of microbial water samples and their method of analysis and routine temperature and salinity monitoring. The bacterial indicator monitored shall be the same as used for monitoring harvest areas;

(10) collection of information on the microbial and chemical quality of molluscan shellfish harvested from the aquaculture site;

(11) collection of data concerning the quality of food production (algae or other) used in the artificial harvest system;

(12) maintenance of the required records; and

(13) how molluscan shell stock will be harvested, processed if applicable, and sold.

(b) Water systems.

(1) If the aquaculture system is of continuous flow through design, water from a harvest area classified as approved, or in the open status of the conditionally approved classification at all times molluscan shellfish are held, may be used without treatment.

(2) Water used in land based aquaculture incorporating a closed or recirculating system shall:

(A) not contaminate molluscan shellfish with residues that would render the product adulterated;

(B) come from a source meeting the restricted classification criteria at a minimum;

(C) be maintained, at a minimum, at the bacteriological quality of the restricted classification; and

(D) be measured at least five times per year.

(3) If the water in the closed or recirculating system meets the criteria for the conditionally approved classification, the operational plan, prior to molluscan shell stock harvest, shall require, at a minimum:

(A) collection of three water samples from the tank at least three days apart over a 14 day period; and

(B) a fecal coliform density of less than 14 MPN per 100 ml in each water sample collected from the holding tank.

(c) Molluscan shell stock quality.

(1) Molluscan shell stock cultured in any system meeting the criteria for the approved classification throughout the culture period may be used in direct marketing.

(2) If the water in a closed or recirculating system is classified as conditionally approved and in the open status, and if the water quality meets a fecal coliform level of less than 14 MPN per 100 ml in each sample collected in the 14 days prior to harvest, the molluscan shell stock may be used in direct marketing.

(3) Molluscan shell stock cultured in a closed or recirculating system which does not meet the requirements of §241.5(3)(A) and (B) shall be relayed or depurated prior to direct marketing.

§241.55. Polyculture Systems.

(a) A polyculture system shall:

(1) meet all requirements in §241.54 of this title (relating to Land Based Aquaculture;

(2) provide information concerning all sources of and species of all organisms to be cultivated, cultured, and harvested.

(b) A polyculture system shall include in its operational plan requirements to:

(1) monitor for human pathogens, animal drugs, and/or other poisonous or deleterious substances that might be associated with polyculture activities; and

(2) subject all harvested molluscan shell stock to relaying or depuration if human pathogens, animal drugs, and/or other poisonous or deleterious substances exist at levels of public health significance.

§241.56. Molluscan Shell Stock Harvesting and Handling.

(a) Harvesters. Any harvester who engages in molluscan shell stock packing as defined in this chapter of this title (relating to Molluscan Shellfish) shall:

(1) be a dealer; or

(2) pack molluscan shell stock for a dealer.

(b) Vessels.

(1) The dealer shall not accept molluscan shell stock unless all vessels used to harvest and transport molluscan shell stock are properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the molluscan shell stock.

(A) Decks and storage bins shall be constructed and located to prevent bilge water or polluted overboard water from coming into contact with the molluscan shell stock.

(B) Bilge pump discharges shall be located so that the discharge shall not come into contact with the molluscan shell stock.

(C) Bags or other containers used for storing molluscan shell stock shall be clean and fabricated from safe materials.

(D) Boat decks and storage bins used in the harvest or transport of molluscan shell stock for direct marketing shall be:

(i) kept clean with potable water or water from a harvest area in the approved classification or in the open status of the conditionally approved classification; and

(ii) constructed so that water does not stand on the deck or in the storage bin.

(E) Coverings shall be provided on harvest boats to protect molluscan shell stock from exposure to adverse conditions.

(2) Cats, dogs, and other animals shall not be allowed on vessels.

(c) Disposal of human sewage from vessels.

(1) Human sewage shall not be discharged overboard from a vessel used in the harvesting of molluscan shell stock or from vessels which buy molluscan shell stock, but only into an appropriate sewage disposal system.

(2) An approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle shall be provided on the vessel to contain human sewage.

(3) Portable toilets shall:

(A) be used only for the purpose intended;

(B) be secured while on board and located to prevent contamination of molluscan shell stock by spillage or leakage;

(C) be emptied only into an appropriate sewage disposal system;

(D) be cleaned and sanitized before being returned to the boat; and

(E) be cleaned only in equipment which is not used for washing or processing food.

(4) Use of other receptacles for sewage disposal may be approved by department if the receptacles are:

(A) constructed of impervious and cleanable materials; and

(B) meet the requirements in subsection (c)(3) of this section.

(d) Molluscan shell stock washing.

(1) Molluscan shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as practicable.

(2) The harvester shall be primarily responsible for washing the molluscan shell stock.

(3) If molluscan shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility.

(4) Water used for molluscan shell stock washing shall be obtained from:

(A) a potable water source; or

(B) a harvest area in the:

(i) approved classification; or

(ii) in the open status of the conditionally approved classification.

(5) If the harvester or dealer elects to use tanks or a water system to wash molluscan shell stock, the molluscan shell stock washing activity shall be constructed, operated, and maintained in compliance with an approved HACCP plan in accordance with §241.60 of this title (relating to General HACCP Requirements) and §241.61 of this title (relating to General Sanitation Requirements).

(e) Molluscan shell stock identification.

(1) Each harvester shall affix a tag to each bag or container of molluscan shell stock which shall be in place while the molluscan shell stock is being transported to a dealer.

(2) If the molluscan shell stock is harvested at more than one location, each container shall be tagged at its harvest area.

(3) When the harvester is also the dealer, the harvester has the option to tag the molluscan shellfish with a harvester's tag or a dealer's tag meeting the requirements outlined in §241.56(e) of this title (relating to Molluscan Shell Stock Identification).

(4) The harvester's tags shall:

(A) be durable, waterproof and approved by the department prior to use; and

(B) be at least 2-5/8 by 5-1/4 inches (6.7 by 13.3 cm) in size.

(5) The harvester's tag shall contain the following indelible, legible information in the order specified:

(A) the commercial oyster boat captain's license number (issued by TPWD), the captain's name, and any one of the following:

(i) the oyster boat license number;

(ii) the boat state registration number; or

(iii) the documented boat name;

(B) the date of harvest;

(C) the most precise identification of the harvest location as is practicable including the initials of the state of harvest, and any department designation of the harvest area by indexing, administrative or geographic designation;

(D) when the molluscan shell stock has been in wet storage in a dealer's operation, the statement: "THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

(E) the type and quantity of molluscan shell stock; and

(F) the following statement in bold capitalized type on each tag "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(6) Molluscan shell stock harvested during the period April 1 through October 31 that will not be refrigerated within the Time-To-Refrigeration guidelines required in §241.58 of this title (relating to Molluscan Shell Stock Temperature Control) shall not be harvested before 6:00 a.m. and shall be placed under refrigeration as designated in §241.58 of this title by 8:00 p.m. each day and shall be identified, stored, and processed separately from molluscan shell stock that is refrigerated within these Time-To-Refrigeration guidelines.

(7) Molluscan shell stock harvested and held exempt from the Time-To-Refrigeration guidelines in paragraph (6) of this subsection shall:

(A) be tagged with a harvester tag meeting all other requirements that shall also be over stamped on both sides with the words "FOR SHUCKING BY A CERTIFIED DEALER" in ink that shall be neon green in color in letters at least one-half inch in height. This special harvester tag shall be placed on each container of molluscan shell stock at the conclusion of harvesting of this exempt molluscan shell stock and before harvesting of any other molluscan shell stock. This special harvester tag shall remain attached to each container until the molluscan shell stock is shucked;

(B) not be commingled with any other molluscan shellfish and shall be stored separately on harvest boats and at any certified location; and

(C) be shucked and placed in containers bearing the consumer information language adopted by the ISSC, or an equivalent approved in writing by the SSD prior to use, unless the invoice and bill of lading for shipment of this exempt molluscan shell stock to another dealer both contain the following statement: "FOR SHUCKING BY A CERTIFIED DEALER". All dealer tags attached to such molluscan shell stock shall be over stamped identical to the harvester tag.

(8) If the molluscan shell stock is removed from the original bag or container, the tag on the new bag or container shall meet the requirements in subsection (e) of this section.

(f) Harvester records.

(1) Each harvester who harvests molluscan shell stock during the period April 1 - October 31 shall maintain records for each date molluscan shell stock is harvested that show the time the first molluscan shell stock is harvested, the time harvesting ends, and the time molluscan shell stock is unloaded from the boat.

(2) If molluscan shell stock is harvested and held exempt from the Time-To-Refrigeration guidelines in subsection (e) of this section, the harvester records shall also include the time that harvesting of this exempt molluscan shell stock ends and the time that harvesting of other molluscan shell stock begins.

(3) These records shall be provided to the dealer with the molluscan shell stock and shall be maintained as part of the dealer's records.

(g) Any molluscan shellfish in possession of a person holding a valid license issued by TPWD under Texas Parks and Wildlife Code, Chapter 47 or Chapter 76, shall be considered to be

harvested for human consumption and offered for sale for food in Texas.

(h) Harvesters shall:

(1) be responsible for control of their molluscan shell stock until acceptance by a dealer;

(2) sell their molluscan shell stock only to a currently certified shellfish dealer;

(3) be required to deliver their molluscan shell stock to a dealer within the day the molluscan shell stock is harvested. For this purpose, a day shall be considered to be a 24 hour period from 12:00 a.m. to 12:00 a.m. the next day. Delivery of the molluscan shell stock means packing the molluscan shell stock into an approved container, transfer of the molluscan shell stock from the boat to a certified location, and acceptance of the molluscan shell stock by the dealer; and

(4) be required to transport molluscan shell stock on ice or at air temperatures of 45 degrees Fahrenheit or less if the time from unloading the boat until the product is accepted by a dealer and placed under refrigeration at a certified location will exceed two hours.

(i) If the harvester transports molluscan shell stock other than by boat to a certified location, the harvest boat captain must accompany the molluscan shell stock until acceptance by the dealer.

(j) It is illegal for harvesters to sell molluscan shell stock directly to the public.

§241.57. Certification Requirements.

(a) No person shall engage in any activity requiring a certificate in §§241.50-241.67 of this title (relating to Molluscan Shellfish) without having applied for and obtained an annual numbered certificate of compliance pertaining to the particular activity from the department. No certificate will be issued without a HACCP plan in accordance with §241.60 of this title (relating to General HACCP Requirements) which is acceptable to the SSD.

(b) Dealer certification.

(1) Shucker/packer. Any person who shucks molluscan shellfish shall be certified as a shucker/packer.

(2) Repacker.

(A) Any person who repacks shucked molluscan shellfish shall be certified as a shucker/packer or repacker.

(B) Any person who repacks molluscan shell stock shall be certified as a shellstock shipper, shucker/packer, or repacker.

(C) A repacker shall not shuck molluscan shellfish.

(3) Shellstock shipper. Any person who ships and receives molluscan shell stock in interstate commerce shall be certified as a shellstock shipper, repacker, or shucker/packer.

(c) Each dealer shall have a Texas business address at which inspections of facilities, activities, equipment, or records can be made.

(d) Each dealer shall accept molluscan shellfish only if they are taken from areas approved by the department, or obtained from sources outside the State of Texas which are approved by the department. If obtained from sources outside of the State of Texas, the molluscan shellfish must be from areas approved by the appropriate state or other government authorities having jurisdiction and must be obtained from dealers currently certified by the appropriate state or other government authority. Molluscan shellfish obtained from sources other than those outlined in this section shall not be sold, offered for sale, or held for sale.

(e) Each dealer shall pay the oyster sales fee as assessed by the Texas Health and Safety Code, §436.103. The fee is established at $1.00 per barrel of oyster shell stock. One barrel shall be equal to three containers (sacks, bushels, boxes, etc.) of oyster shell stock. Each container of oyster shell stock shall not weigh more than 100 pounds. Any container weighing more than 100 pounds shall be counted as two containers for purposes of computing the oyster sales fee owed.

(f) Prior to beginning construction of a new molluscan shellfish processing plant, or major remodeling of an existing molluscan shellfish processing plant (which includes, but is not limited to: any process new to that particular plant; any change of product flow; or any enlarging of the plant structure) complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the SSD for review and approval. Additional plans of the entire premises may be required showing all structures, as well as, all water wells and septic systems with related distances and a statement of specifications as to type, sizes, design, date installed, etc. Plans shall be submitted no less than 30 days prior to initiating a new process or beginning construction. No operations shall be conducted while any inside plant construction or any other construction which has the potential to contaminate the product is occurring. A legibly written or typed application for certification on forms provided by the department must be filed with the SSD each year.

(g) The application for a shucker/packer or repacker certificate must be accompanied by a written statement of the procedure the applicant will use to determine the SELL BY date for molluscan shellfish packed and shipped from the location listed in the application.

(h) A certificate and unique number shall be issued by the department only after an inspection of the plant by an authorized agent has revealed that the plant and practices are in compliance with these sections. A certificate and unique number shall be issued to a dealer for each location at which molluscan shellfish operations are to be conducted and a certificate is required.

(i) The inspection of a previously certified plant which has exhibited operational problems or violations of operational requirements of these sections or had a certificate of compliance revoked shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, are submitted to the SSD for review and approval. An application may be rejected and a certificate of compliance denied based on a history of failure to comply with the requirements of these sections.

(j) Molluscan shellfish operations by the dealer shall not begin until the department has issued the certificate for that location. Each certificate shall expire automatically at 11:59 p.m. on August 31st following the date of issue. Certificates shall not be transferable.

(k) After a certificate is issued, unannounced inspections may be conducted at any time the SSD has reason to believe the business may be in operation or that molluscan shellfish may be stored on the premises and at such frequency as may be necessary to assure that adequate operational and sanitary conditions are maintained. All molluscan shellfish at a certified location shall be the responsibility of the dealer at that location, for the purposes of these sections. A copy of the completed inspection form listing written descriptions of

the violations observed along with any necessary explanation shall be provided by an authorized agent of department to the most responsible individual present at the firm at the conclusion of the inspection. Any violations of the same requirement found on a consecutive inspection may result in certificate suspension in accordance with subsection (l) of this section. Molluscan shellfish inspections and the SSD forms shall comply with the requirements established in the current National Shellfish Sanitation Program.

(1) When an inspection detects a critical deficiency the violation shall be corrected during that inspection or the plant must cease production affected by the violation. If production affected by the violation does not voluntarily cease, all molluscan shellfish handled or processed while the violation exists or existed shall be detained pursuant to Health and Safety Code, §436.028.

(2) When an inspection detects four or more key deficiencies, the dealer shall establish a correction schedule acceptable to the SSD. Follow-up inspection shall determine if the violations have been corrected or are being corrected in accordance with the scheduled correction dates noted on the previous inspection report.

(3) When an inspection detects other deficiencies or three or less key deficiencies, the deficiencies shall be corrected prior to the next routine inspection.

(l) The SSD may initiate procedures to suspend or revoke a certificate of compliance as follows.

(1) The procedures shall be in accordance with the Texas Health and Safety Code, §436.114 and the provisions of the Government Code, Chapter 2001, Administrative Procedure Act, and department formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(2) The grounds for suspension or revocation or assessment of administrative penalties may be any one or more of the following:

(A) inspection results indicate unsatisfactory conditions in the plant or the existence of a public health hazard;

(B) the certificate holder or representative refuses to allow an inspection or otherwise interferes with the authorized department agent in the performance of his or her duties; or

(C) the certificate holder does not have a HACCP plan, has a HACCP plan unacceptable to the SSD, or fails to comply with a HACCP plan which is acceptable to the SSD.

(m) A dealer whose certificate has been suspended may not process any molluscan shellfish for a period determined by the commissioner.

(n) A dealer whose certificate has been suspended may not process any molluscan shellfish until the SSD is satisfied that all necessary corrections have been made. A suspension will not be rescinded until an inspection establishes that the firm has corrected all violations which resulted in the suspension and is in full compliance with all applicable criteria of these sections.

(o) A certificate may be revoked for any of the reasons outlined in subsection (l) of this section or for either of the following: if the violations initiating a suspension fail to be corrected within the time frame established, or if a history of repeated suspensions exists. A dealer whose certificate has been revoked may not be issued a new certificate for 180 days or before the next certification period, whichever is longer, after the date of signing of the final order of revocation. When the department contemplates suspension or revocation, the certificate holder shall be afforded the opportunity for a hearing. Notice of the contemplated action shall be given to the certificate holder by personal service or certified mail, return receipt requested. If no request for a hearing is received by the director of the SSD, within 14 days of personal service or the date of receipt of the notice by the dealer, the allegations contained in the notice are admitted as true, and the department may proceed to take the action set out in the notice.

(p) When the department determines that administrative penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Texas Health and Safety Code, §436.034; the Government Code, Chapter 2001, Administrative Procedure Act; and the department formal hearing procedures in Chapter 1 of this title. When the department contemplates administrative penalties, the certificate holder or harvester shall be afforded the opportunity for a hearing. Notice of the contemplated action shall be given to the certificate holder or harvester by personal service or certified mail, return receipt requested. If no request for a hearing is received by the director of the SSD, within 14 days of personal service or the date of receipt of the notice by the dealer, the allegations contained in the notice are admitted as true, and the department may proceed to take the action set out in the notice.

(q) The seriousness of violations shall be categorized by one of the following severity levels. The examples following the severity levels are neither exhaustive nor controlling. They reflect only the seriousness of the violation and not the intent of the violator, the history of the violator, the amount necessary to deter future violations, or efforts to correct the violation.

(1) Severity Level I - Violations that are of minor public health significance. The following are examples of severity level I violations (other deficiency):

(A) failure to keep premises clean and have adequate drainage;

(B) failure to clean and maintain floors, walls, or ceilings;

(C) failure to provide adequate and properly shielded lighting;

(D) failure to post hand washing signs at hand washing stations;

(E) failure to provide blower air intake with approved filter;

(F) failure to prohibit use of "dip" buckets to rinse hands or knifes;

(G) failure to use returnable containers only within the plant; and

(H) failure to restrict shuckers from the packing room and all unauthorized persons from processing areas when operating.

(2) Severity Level II - Violations that are of more than minor significance, or if left uncorrected, could result in more serious violations. The following are examples of severity level II violations (other deficiency):

(A) failure to provide or use storage for employee clothing or personal articles;

(B) failure to have clean, maintained, adequately drained floor;

(C) failure to provide adequate heating/cooling/ventilation;

(D) failure to provide adequate quantity of water to facility;

(E) failure to provide hand washing stations with soap, sanitary towels, and/or waste receptacles with proper lids;

(F) failure to properly construct, locate, maintain, and/or keep clean all non-food contact surfaces;

(G) failure to provide detergents, approved sanitizers, brushes, and/or a sanitizer test kit to properly clean and sanitize the facility;

(H) failure to properly store and/or keep clean single service containers;

(I) failure to maintain frozen molluscan shellfish at 0 degrees Fahrenheit or less;

(J) failure to require employees to wear clean outer garments, impermeable gloves/finger cots; to store these items properly; and/or to wear proper hair restraints;

(K) failure to promptly remove empty molluscan shells or other accumulation; and

(L) failure to meet plumbing code and/or install water disposal correctly or have adequate drainage where operations discharge water.

(3) Severity Level III - Violations that are significant and which, if not corrected, could threaten public health. The following are examples of severity level III violations (key deficiency):

(A) failure to exclude insects, rodents, vermin, and any other animals;

(B) failure to provide hot and cold water at each sink and lavatory;

(C) failure to protect plumbing from backflow, backsiphonage, and/or cross contamination;

(D) failure to have toilets clean, repaired, and/or have self-closing doors;

(E) failure to properly use, store, separate, and/or label poisonous/toxic materials;

(F) failure to properly construct, locate, clean, and/or maintain food contact surfaces;

(G) failure to provide a temperature measuring device in each refrigeration unit;

(H) failure to wash molluscan shell stock reasonably free of bottom sediments and detritus as soon after harvesting as feasible;

(I) failure of employees to wash/sanitize hands and/or exhibit good hygienic practices;

(J) failure to restrict any personnel with infections that may be transmitted through the molluscan shellfish from participating in molluscan shellfish operations; and

(K) failure to maintain complete and accurate records.

(4) Severity Level IV - Violations that have a significant adverse impact on public health. The following are examples of severity level IV violations (key deficiency):

(A) failure to separate operations by partition, space, or time;

(B) failure to provide adequate refrigeration units;

(C) failure to clean and sanitize food contact surfaces effectively and within required time frame;

(D) failure to label molluscan shell stock or properly complete label;

(E) failure to protect molluscan shell stock from contamination;

(F) failure to pack into containers with a valid certificate number for that location; comply with label requirements; and/or to use proper date;

(G) failure to promptly shuck, pack, and protect molluscan shellfish; and

(H) failure to have responsible, effective, designated person as supervisor.

(5) Severity Level V - Violations that are most significant and create an imminent hazard to public health. The following are examples of severity level V violations (critical deficiency):

(A) failure to cease operations when location/plant is flooded;

(B) failure to protect the water supply from contamination;

(C) failure to install and/or maintain adequate sewage disposal system;

(D) failure to process molluscan shellfish from only an approved source;

(E) failure to maintain molluscan shell stock at the proper temperature;

(F) failure to obtain approval for wet storage operation;

(G) failure to keep molluscan shellfish from becoming contaminated;

(H) failure to cool packed molluscan shellfish to 45 degrees Fahrenheit within two hours of delivery to the packing room;

(I) failure to maintain packed molluscan shellfish at 45 degrees Fahrenheit or less during storage, repacking, and to cover in ice; and

(J) failure to provide sanitary ice and/or properly protect it.

(r) The department may impose differing levels of penalties for different severity level violations.

(1) Administrative penalties shall be imposed for Severity Level III, IV and V violations. Administrative penalties may be assessed for Severity Level I and II violations when they are combined with those of higher severity level(s) or for repeated violations which could have been prevented by corrective action and for which the dealer or harvester did not take effective corrective action.

(2) Tables IA and IB show the base administrative penalties and the percentage of base amounts to be proposed based on severity level of violation.

Figure 1: 25 TAC §241.57(r)(2)

Figure 2: 25 TAC §241.57(r)(2)

(3) Adjustments to the values in Tables IA and IB in paragraph (2) of this subsection may be made for the presence or absence of the following factors:

(A) prompt identification and reporting;

(B) corrective action to prevent recurrence;

(C) compliance history;

(D) prior notice of similar event; and

(E) multiple occurrences.

(4) The penalty may be in an amount not to exceed $25,000 a day for each violation for a person who violates the Health and Safety Code Chapter 436, or a rule in this chapter of this title (relating to Molluscan Shellfish), or an order of the department. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(s) The department may offer a certificate holder or harvester the opportunity to attend a settlement conference to discuss with the SSD, methods and schedules for correcting the violation(s) or to show compliance with applicable provisions of the Health and Safety Code Chapter 436, the rules in this chapter of this title (relating to Molluscan Shellfish), certificate conditions, and any orders of the department issued thereunder, or discuss all such topics. The Office of General Counsel may conduct settlement negotiations.

(t) Notices of any settlement conference shall be sent by personal service or certified mail, return receipt requested. A settlement conference is not a prerequisite for the action to be taken under subsections (l), (m), (n), (o), or (p) of this section.

(u) By acceptance of a certificate, the holder agrees to save, hold harmless, and indemnify the State of Texas, the department, and its employees against any and all liability, claims or losses for property damage or personal injury which result in whole or in part from the certificate holder's activities. The State of Texas shall not be held liable for financial losses incurred by the molluscan shellfish transplanters, gatherers, harvesters, plant supervisors, or plant owners due to failure of molluscan shellfish activity, condemnation of molluscan shellfish, loss of molluscan shellfish, or other reasons.

§241.58. Molluscan Shell Stock Temperature Control.

(a) Molluscan shell stock intended for consumption as raw product shall be placed under ambient refrigeration at 45 degrees Fahrenheit (7.2 degrees Centigrade) or less within the hours specified below:

(1) 20 hours for the months of November, December, January, February, and March;

(2) 14 hours for the month of April; and

(3) for the months of May through October, as established by the department based on the current Time-To-Refrigeration guidelines adopted by the ISSC.

(b) The Time-To-Refrigeration guidelines shall be based upon the first molluscan shell stock harvested each day.

(c) The Time-To-Refrigeration guidelines established for each month shall be in effect from 12:01 a.m. of the first day of the month until 11:59 p.m. of the last day of the month.

(d) The department may approve other measures proposed by the industry to provide controls equivalent to the Time-To-Refrigeration guidelines matrix.

§241.59. Trucks or Other Vehicles Used to Transport Molluscan Shell Stock to the Original Dealer.

(a) The harvester or dealer who transports molluscan shell stock from the harvester to the first dealer to handle the product, shall assure that all trucks used to transport molluscan shell stock are properly constructed, operated, and maintained to prevent contamination, deterioration, and decomposition.

(b) Storage bins on trucks or other vehicles used in the transport of molluscan shell stock for direct marketing shall be:

(1) kept clean with potable water or water from an approved area or conditionally approved area in the open status; and

(2) constructed so that water does not stand on the deck or in the storage bin.

(c) Molluscan shell stock shall be transported in air temperatures inside the truck or other vehicle of 45 degrees Fahrenheit (7.2 degrees Centigrade) or less.

(d) Mechanical refrigeration units shall be:

(1) equipped with automatic controls; and

(2) capable of maintaining the ambient air temperature in the storage area at temperatures of 45 degrees Fahrenheit (7.2 degrees Centigrade) or less.

(e) Any ice used to cool molluscan shell stock during transport shall be produced and handled in compliance with the sanitation standard operating procedures in accordance with §241.61 of this title (relating to General Sanitation Requirements).

(f) Cats, dogs, and other animals shall not be allowed in any part of the truck or other vehicle where molluscan shell stock is stored.

§241.60. General HACCP Requirements.

(a) Every dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of molluscan shellfish product processed by that dealer and to identify the preventive measures that the dealer can apply to control those hazards. Such food safety hazards can be introduced both within and outside the processing plant environment, including food safety hazards that can occur before, during, and after harvest. A food safety hazard that is reasonably likely to occur is one for which a prudent dealer would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the particular type of molluscan shellfish product being processed in the absence of those controls.

(b) Every dealer shall have, implement, and comply with a written HACCP plan which is acceptable to the SSD. A copy of the plan shall be provided to the SSD upon request. A HACCP plan shall be specific to:

(1) each location where molluscan shellfish products are processed by that dealer; and

(2) each kind of molluscan shellfish product processed by the dealer. The plan may group kinds of molluscan shellfish products together, or group kinds of production methods together, if the food safety hazard, critical control points, critical limits, and procedures required to be identified and performed in this section are identical for all molluscan shellfish products so grouped or for all production methods so grouped.

(c) The HACCP plan shall, at a minimum:

(1) list the food safety hazards that are reasonably likely to occur, as identified in accordance with subsection (a) of this section and that must be controlled for each molluscan shellfish product. Consideration should be given to whether any food safety hazards are reasonably likely to occur as a result of the following:

(A) natural toxins;

(B) microbiological contamination;

(C) chemical contamination;

(D) pesticides;

(E) drug residues;

(F) unapproved use of direct or indirect food or color additives; and

(G) physical hazards.

(2) list the critical control points for each of the identified food safety hazards, including as appropriate:

(A) critical control points designed to control food safety hazards introduced outside the processing plant environment, including food safety hazards that occur before, during, and after harvest. If the dealer can demonstrate to the department through a hazard analysis that the food safety hazard is not reasonably likely to occur or is otherwise controlled, the critical control point is not required; and

(B) critical control points designed to control food safety hazards that could be introduced in the processing plant environment. If the dealer can demonstrate to the department through a hazard analysis that the food safety hazard is not reasonably likely to occur, the critical control point is not required;

(3) list the critical limits that must be met at each of the critical control points;

(4) list the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) include any corrective action plans that have been developed in accordance with this section to be followed in response to deviations from critical limits at critical control points;

(6) list the verification procedures, and frequency thereof, that the dealer will use in accordance with this section. The records shall contain the actual values and observations obtained during monitoring; and

(7) provide for a record keeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

(d) The HACCP plan shall be signed and dated by the most responsible individual on site at the processing facility or by a higher level official of the dealer:

(1) upon initial acceptance;

(2) upon any modification; and

(3) upon verification of the plan in accordance with subsection (g)(1)(A) of this section.

(e) Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with §241.61 of this title (relating to General Sanitation Requirements), they need not be included in the HACCP plan, and vice versa.

(f) Corrective Actions.

(1) Whenever a deviation from a critical limit occurs, a dealer shall take corrective action either by:

(A) following a corrective action plan that is appropriate for the particular deviation; or

(B) following the procedures in subsection (f) of this section.

(2) Dealers may develop written corrective action plans, which become part of their HACCP plans in accordance with subsection (c)(5) of this section, by which they predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

(A) no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; and

(B) the cause of the deviation is corrected.

(3) When a deviation from a critical limit occurs and the dealer does not have a corrective action plan that is appropriate for that deviation, the dealer shall:

(A) segregate and hold the affected product, at least until the requirements of subsections (f)(3)(B) and (C) of this section are met;

(B) perform or obtain a review to determine the acceptability of the affected product for distribution. The review shall be performed by an individual or individuals who have adequate training or experience to perform such a review. Adequate training may or may not include training in accordance with this section;

(C) take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

(D) take corrective action, when necessary, to correct the cause of the deviation; and

(E) perform or obtain timely reassessment by an individual or individuals who have been trained in accordance with this section to determine whether the HACCP plan needs to be modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as necessary.

(4) All corrective actions taken in accordance with this section shall be fully documented in records that are subject to verification in accordance with subsection (g) of this section and the record keeping requirements of subsection (h) of this section.

(g) Verification.

(1) Every dealer shall verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include, at a minimum:

(A) a reassessment of the adequacy of the HACCP plan whenever any changes occur that could affect the hazard analysis or alter the HACCP plan in any way or at least annually. The reassessment shall be performed by an individual or individuals who have been trained in accordance with subsection (i) of this section. The HACCP plan shall be modified immediately whenever a reassessment reveals that the plan is no longer adequate to fully meet

the requirements of subsection (c) of this section. These changes may include:

(i) raw materials or source of raw materials;

(ii) product formulation;

(iii) processing methods or systems;

(iv) finished product distribution systems; or

(v) the intended use or consumers of the finished product.

(B) ongoing verification activities including:

(i) a review of any consumer complaints that have been received by the dealer to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points;

(ii) the calibration of process-monitoring instruments; and

(iii) at the option of the dealer, the performing of periodic end-product or in-process testing.

(C) a review, including signing and dating, by an individual who has been trained in accordance with subsection (i) of this section, of the records that document:

(i) the monitoring of critical control points. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that they document values that are within the critical limits. This review shall occur within one week of the day that the records are made;

(ii) the taking of corrective actions. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with subsection (f) of this section. This review shall occur within one week of the day that the records are made; and

(iii) the calibrating of any process monitoring instruments used at critical control points and the performing of any periodic end-product or in-process testing that is part of the dealer's verification activities. The purpose of these reviews shall be, at a minimum, to ensure that the records are complete, and that these activities occurred in accordance with the processor's written procedures. These reviews shall occur within a reasonable time after the records are made.

(2) Dealers shall immediately follow the procedures in subsection (f) of this section, whenever any verification procedure, including the review of a consumer complaint, reveals the need to take a corrective action.

(3) The calibration of process-monitoring instruments, and the performing of any periodic end-product and in-process testing, in accordance with (g)(1)(B)(ii) and (iii) of this section shall be documented in records that are subject to the record keeping requirements of subsection (h) of this section.

(h) Records.

(1) All records required shall include:

(A) the name and location of the dealer;

(B) the date and time of the activity that the record reflects;

(C) the signature or initials of the person performing the operation; and

(D) where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on records at the time that it is observed.

(2) All records required shall be retained at the processing facility for at least one year after the date they were prepared in the case of refrigerated products and for at least two years after the date they were prepared in the case of frozen products.

(3) Records that relate to the general adequacy of equipment or processes being used by a processor, including the results of scientific studies and evaluations, shall be retained at the processing facility for at least two years after their applicability to the product being produced at the facility.

(4) If the processing facility is closed for a prolonged period between seasonal operations, or if record storage capacity is limited on a processing vessel or at a remote processing site, the records may be transferred to some other reasonably accessible location at the end of the seasonal operations, but shall be immediately produced for official review upon request.

(5) All records required by subsection (h) of this section and HACCP plans required by subsections (b) and (c) of this section shall be available for official review and copying at reasonable times.

(6) Tags on containers of molluscan shell stock are not subject to the requirements of this section unless they are used to fulfill the requirements of record keeping.

(7) The maintenance of records on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and electronic signatures.

(i) Training.

(1) At a minimum, the following functions shall be performed by an individual who has successfully completed training in the application of HACCP principles to molluscan shellfish processing at least equivalent to that received under standardized curriculum recognized as adequate by the FDA or who is otherwise qualified through job experience to perform these functions:

(A) developing a HACCP plan, which could include adapting a model or generic-type HACCP plan that is appropriate for a specific processor, in order to meet the requirements of subsection (c) of this section;

(B) reassessing and modifying the HACCP plan in accordance with the corrective action procedures specified in subsection (f)(3)(E) of this section, and the HACCP plan in accordance with the verification activities specified in subsection (g)(1)(B) of this section; and

(C) performing the record review required by subsection (g)(1)(C) of this section.

(2) Job experience will qualify an individual to perform these functions if it has provided knowledge at least equivalent to that provided through the standardized curriculum as determined by the SSD.

(3) The trained individual need not be an employee of the dealer.

§241.61. General Sanitation Requirements.

(a) Each dealer shall have written sanitation standard operating procedures. A copy of the procedures shall be provided to the SSD upon request. Each dealer shall monitor conditions and practices that are both appropriate to the plant and the food being processed with sufficient frequency to ensure, at a minimum, conformance with

the requirements specified in §229.183(a)(2) of this title (relating to Minimum Standards for Licensure) concerning current good manufacturing practice in manufacturing, processing, packing, or holding human food. Copies are indexed and filed in the offices of the SSD, and are available for inspection during normal working hours. The requirements specified in §229.183(a)(2) of this title relate to the following sanitation items:

(1) safety of water for processing and ice production;

(2) condition and cleanliness of food contact surfaces;

(3) prevention of cross contamination;

(4) maintenance of hand washing, hand sanitizing and toilet facilities;

(5) protection from adulterants;

(6) proper labeling, storage, use of toxic compounds;

(7) control of employees with adverse health conditions; and

(8) exclusion of pests.

(b) Each dealer shall maintain sanitation control records that, at a minimum, document the monitoring and corrections prescribed by subsection (a) of this section. These records are subject to the requirements of §241.60(h) of this title (relating to General HACCP Requirements).

(c) Sanitation controls may be included in the HACCP plan, required by §241.60(b) of this title. However, to the extent that they are monitored in accordance with subsection (a) of this section, they need not be included in the HACCP plan, and vice versa.

§241.62. Dealer Molluscan Shell Stock Identification.

(a) The dealer shall keep the harvester's tag affixed to each container of molluscan shell stock until the bag or container is:

(1) shipped; or

(2) emptied to wash, grade or pack the molluscan shell stock.

(b) Unless the dealer is also the harvester and has already placed a dealer tag on the container, the dealer shall affix his tag to each container of molluscan shell stock prior to shipment.

(c) The dealers' tags shall:

(1) be durable, waterproof and approved by the department prior to use; and

(2) be at least 2-5/8 by 5-1/4 inches (6.7 by 13.3 cm) in size.

(d) The dealer's tag shall contain the following indelible, legible information in the order specified below:

(1) the dealer's name and address;

(2) the dealer's certification number as assigned by the department and the original shellstock shipper's certification number;

(3) the date of harvest;

(4) the most precise identification of the harvest location as is practicable including the initials of the state of harvest, and any department designation of the harvest area by indexing, administrative or geographic designation;

(5) when the molluscan shell stock has been in wet storage in a dealer's operation, the tag shall state: "THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

(6) the type and quantity of molluscan shell stock; and

(7) the following statements in bold capitalized type on each tag:

(A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS"; and

(B) the consumer information statement adopted by the ISSC or its equivalent as approved by the SSD.

(e) When both the dealer and harvester tags appear on the container, the dealer's tag is not required to duplicate the information on the harvester's tag.

(f) If the molluscan shell stock is removed from the original container, the tag on the new container shall meet the requirements of this section.

(g) When the molluscan shell stock is removed from the original container, the dealer shall:

(1) keep the harvester tag for 90 days unless records maintained as part of the HACCP plan provide the necessary information to track product to the original harvest location;

(2) track the harvest area and date of harvest for the molluscan shell stock; and

(3) maintain the lot identity of all molluscan shell stock during any intermediate stage of processing.

§241.63. Shucked Molluscan Shellfish Labeling.

(a) If the dealer uses reusable containers to hold or transport shucked molluscan shellfish between activities for the purpose of further processing or packing, the reusable containers are exempt from the labeling requirements in this section. When reusable containers are used, the lot shall be accompanied by a record containing:

(1) the shuckers-packer's name and certification number;

(2) the shucking date; and

(3) the quantity of molluscan shellfish per container and the total number of containers.

(b) If the dealer uses master shipping cartons, the master cartons are exempt from these labeling requirements when the individual containers within the carton are properly labeled.

(c) The dealer shall assure that each individual package containing fresh or frozen shucked molluscan shellfish meat is labeled in a legible and indelible form in accordance with applicable federal and state regulations concerning:

(1) information on the principal display panel; and

(2) the standard of identity.

(d) The dealer shall assure that each package containing less than 64 fluid ounces of fresh or frozen molluscan shellfish shall have:

(1) the shucker-packer's or repacker's certification number on the label; and

(2) a "SELL BY DATE" which provides a reasonable subsequent shelf-life or the words "BEST IF USED BY" followed by a date when the product would be expected to reach the end of its shelf-life. The date shall consist of the abbreviation for the month

and number of the day of the month. For frozen molluscan shellfish, the year will be added to the date.

(e) The dealer shall provide a "DATE SHUCKED" on all containers of shucked molluscan shellfish with a capacity of 64 fluid ounces (1873 ml) or more. The "DATE SHUCKED" shall:

(1) for fresh molluscan shellfish, consist of the number of the day of the year (Julian date) or the month and the number of the day of the month;

(2) for frozen molluscan shellfish, include the year; and

(3) appear on the lid and either the sidewall or bottom of durable containers; or

(4) appear on the lid or sidewall of disposable containers.

(f) The dealer shall label all frozen molluscan shellfish as frozen in type of equal prominence immediately adjacent to the name of the molluscan shellfish.

(g) If the dealer thaws and repacks frozen molluscan shellfish, the dealer shall label the molluscan shellfish container as previously frozen.

(h) The dealer shall provide all label information in a legible and indelible form.

(i) Shucked Molluscan Shellfish. If the dealer elects to repack molluscan shellfish, the dealer shall pack and label all molluscan shellfish in accordance with this section except that the original date of shucking shall be used as the "DATE SHUCKED" or in establishing the "SELL BY DATE".

§241.64. Labeling of Molluscan Shellfish Post-Harvest Processed to Reduce Vibrio vulnificus.

(a) A dealer may elect to use a process to reduce *Vibrio vulnificus*levels in molluscan shellfish.

(1) The dealer shall:

(A) have a HACCP plan acceptable to the department for the process which includes:

(i) an end point criteria for the process as non-detectable (<3 MPN/gram) using the FDA approved EIA procedure of Tamplin, et al, as detailed in Chapter 9 of the FDA Bacteriological Analytical Manual, 7th edition, 1992; and

(ii) a sampling program to demonstrate that the end point criteria is met.

(B) package and label all molluscan shellfish in accordance with the requirements in this chapter of this title (relating to Molluscan Shellfish) including labeling all molluscan shellfish which has been subjected to the process but which is not frozen in accordance with the molluscan shell stock labeling requirements in §241.62 of this title (relating to Dealer Molluscan Shell Stock Identification); and

(C) keep records in accordance with the requirements in this chapter of this title (relating to Molluscan Shellfish).

(b) A dealer who meets the requirements of this section may label product which has been subjected to the reduction process as "Processed to reduce *Vibrio vulnificus* to non-detectable levels".

§241.65. Shipping Documents and Records.

(a) Each molluscan shellfish shipment shall be accompanied by a shipping document which contains:

(1) the name, address, and certification number of the shipping dealer;

(2) the name and address of the major consignee; and

(3) the kind and quantity of the molluscan shellfish product.

(b) The receiving dealer shall:

(1) maintain in his files a copy of the completed shipping document; and

(2) make the shipping document available to the department upon request.

(c) If the shipment is subdivided to different dealers, each receiving dealer shall maintain records sufficient to trace his portion back to the original shipment.

(d) Each dealer shall have a business address at which transaction records are maintained.

(e) Each dealer shall maintain complete, accurate and legible records of department required information in a form authorized by the department.

(f) Transaction records shall be sufficient to:

(1) document that the molluscan shellfish are from a source authorized under this chapter of this title (relating to Molluscan Shellfish);

(2) permit a container of molluscan shellfish to be traced back to the specific incoming lot of shucked molluscan shellfish from which it was taken; and

(3) permit a lot of shucked molluscan shellfish or a lot of molluscan shell stock to be traced back to the harvest area, date of harvest, and if possible, the harvester or group of harvesters.

(g) Purchases and sales shall be recorded:

(1) in a permanently bound ledger book; or

(2) using other recording methods acceptable to and authorized by the department.

(h) The transaction records shall be retained:

(1) in the case of fresh molluscan shellfish, for a minimum of one year; and

(2) in the case of frozen molluscan shellfish, for at least two years or the shelf-life of the product, whichever is longer.

(i) If computer records are maintained, the department shall approve the format and its use.

§241.66. Tagging of Depurated Molluscan Shellfish.

All containers of treated molluscan shellfish, before being released from the molluscan shellfish treatment plant, shall be suitably tagged or labeled with a uniform tag or label bearing the following information:

(1) the depuration processor's name and address, including at least the city and state;

(2) the depuration processor's valid, complete certificate number issued by the Seafood Safety Division (SSD);

(3) the type of molluscan shell stock;

(4) the date on which the molluscan shellfish were released from the depuration plant;

(5) the term "Depurated" in letters as large as the largest other letters printed on the tag or label; and

(6) the lot code of the treatment process batch.

§241.67. Depuration Records.

(a) Records containing the following information shall be available at the depuration plant at all times for molluscan shellfish presently undergoing the treatment process:

(1) name and/or location of gathering area(s);

(2) copy of permit(s);

(3) date received;

(4) quantity of molluscan shellfish received;

(5) quantity of molluscan shellfish destroyed;

(6) quantity of molluscan shellfish in tank(s); and

(7) date and time of initiation of treatment.

(b) Records containing the following information shall be available at the depuration plant at all times for each lot of molluscan shellfish for which the treatment process has been completed for a period of one year from the date of treatment:

(1) name and/or location of gathering area(s);

(2) copy of permit(s);

(3) date received in plant;

(4) quantity of molluscan shellfish received;

(5) quantity of molluscan shellfish destroyed;

(6) date and time of initiation of treatment;

(7) date and time of termination of treatment;

(8) number of hours treated;

(9) quantity of molluscan shellfish treated;

(10) quantity of molluscan shellfish destroyed after treatment;

(11) all laboratory results as specified;

(12) date released from plant; and

(13) quantity of molluscan shellfish released.

(c) The plant supervisor or assistant plant supervisor shall send to the Texas Department of Health, Seafood Safety Division, 1100 W. 49th Street, Austin, Texas 78756, on a weekly basis, a copy of the daily records required in this section and the laboratory analysis results of all molluscan shellfish and water samples completed during each weekly period.

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 January 21, 1998.

TRD-9801018
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter F. Inland Marine Insurance

Definition and Classification of Inland Marine Insurance

28 TAC §5.5002

The Texas Department of Insurance proposes an amendment to §5.5002(5)(Q), relating to inland marine insurance. The amendment is necessary to provide that credit property insurance coverage resulting from an open or closed end consumer credit transaction that is a retail installment transaction under the Texas Finance Code is a class of inland marine insurance for which rules, rates, and forms must be filed with the department for approval. The amendment provides that credit property insurance coverage resulting from consumer credit transactions must comply with all applicable provisions of the subparagraph. The amendment sets out the meaning of an open or closed end consumer credit transaction that is a retail installment transaction. The amendment provides that coverage under credit property insurance policies resulting from an open or closed end consumer transaction shall be limited to "durable personal property," and provides a definition for that term. The amendment prohibits premium calculations based on amounts paid for services, meals, entertainment, nondurable property, finance/service charges, loan interest, delivery charges, or other insurance premiums, for coverages resulting from consumer credit transactions. The amendment provides for adequate disclosure in consumer credit property insurance transactions. It requires that five items of information be provided to the prospective insured at the time of invitation to contract, and requires additional disclosure in the policy about when the vendor's interest in an item of insured property ends, as well as the mechanics of that determination. The amendment requires claim forms and instructions be provided at the time of insurer acceptance of the coverage. The amendment provides that credit property insurance coverage resulting from commercial credit transactions, as set out in clause (ii) of the amendment, continues to be nonregulated.

Lyndon Anderson, associate commissioner for property and casualty at the Texas Department of Insurance, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact to the state or local units of government as a result of enforcing or administering the section. Mr. Anderson also has determined there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed amendment.

Mr. Anderson also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing or administering the proposed amendment will be credit property insurance availability at rates which are fair, reasonable, not excessive, and more competitive than those resulting under the current regulation. An additional benefit is the assurance that under the amended section consumers will be purchasing credit insurance

only on property considered to be insurable, and therefore appropriate subject matter for insurance coverage.

Mr. Anderson also has determined that for the first year the proposed amendment is in effect, individual insurer compliance cost under the amended rule will vary, but should not exceed $5,000 per filing, based on department experience. This cost could be materially lower for any insurer which has developed and made rate and form filings for other property and casualty insurance coverages. The ultimate amount of first-year compliance cost will be determined by the overall efficiency of an insurer in developing and making its rate and form filings, and the number of filings made. The compliance cost in the second through fifth years should not vary materially from the first-year cost.

Mr. Anderson further has determined that the proposed amendment will not have an adverse effect on insurers qualifying as small businesses under the Government Code, §2006.001, because those insurers authorized to write inland marine coverages in this state which would qualify as small businesses do not write the class of coverage subject to the filing and approval provisions of the proposed amendment. A computerized search of the 1996 Annual Statements for the 868 property and casualty insurers authorized to write inland marine coverages revealed that 383 actually reported written premium for inland marine coverages. Seven of the 383 insurers reporting inland marine written premium write less than $1 million annual premium. Department inquiry of each of these seven insurers revealed that none of the reported inland marine premium on their annual statement reporting forms is attributable to credit property insurance, and each indicated it does not issue credit property insurance in this state.

Comments on the proposal may be submitted to the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication. An additional copy of comments should be submitted to Lyndon Anderson, Associate Commissioner, Property Division, P.O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. A request for a public hearing on the proposed amendment should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code, Article 5.53. Article 5.53 authorizes the commissioner to adopt a definition and classes of inland marine insurance.

The proposed amendment affects regulation pursuant to the following statutes: Insurance Code, Article 5.53

§5.5002. Texas Definition of Inland Marine Insurance.
Inland marine insurance is defined and classified as follows.

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

(5) Other inland marine risks.

(A)-(P) (No change.)

(Q) Inland marine insurance classes of coverage, commonly referred to as consumer credit property insurance and commercial credit property insurance, set out in clauses (i) and (ii) of this subparagraph, respectively, as follows:

(i) Coverage resulting from an open or closed end consumer credit transaction that is a retail installment transaction (filed). For purposes of this subparagraph, "retail installment transaction" has the meaning assigned in the Texas Finance Code, §345.001. The credit property insurance addressed in this clause must comply with provisions in subclauses (I) through (IV) of this clause.

(I) Policies offering coverage addressed in this clause must include coverage while in transit and may be extended to include the interest of a vendee, mortgagor, or lessee, but in no event shall the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(II) Policies extending the coverage addressed in this clause shall be limited to coverage only for durable personal property.

(-a-) For purposes of this clause, "durable personal property" shall mean consumer durable goods, also known as consumer "hard" goods, designed to be used repeatedly and over an extended time period, not generally consumed in use, and specifically excluding wearing apparel, draperies, piece goods, and similar items.

(-b-) Premium calculations for coverage addressed in this clause may not be based on amounts paid for services, meals, entertainment, any nondurable property items, finance or service fees, loan interest, delivery charges, or other insurance premiums (egs., credit life, credit disability or involuntary unemployment insurance coverage).

(-c-) Policies or certificates shall include, for purposes disclosing the point at which the vendor's interest in an item of covered property ends, a statement that:

(-1-) net payments are applied to oldest unpaid purchases first; and

(-2-) if more than one item was purchased the same day, payment will be applied to pay off the lowest priced item first.

(III) An offer to extend coverage addressed in this clause shall include, at the time of the invitation to contract, a prominent written disclosure in no smaller than 12-point boldface type indicating that the coverage being offered:

(-a-) might duplicate existing coverage if the consumer has a residential property policy;

(-b-) ceases for any item of covered property at the time the debt on that covered property item is paid in full;

(-c-) is primary coverage for the property being insured, and the first source to be used in the event of loss;

(-d-) may be canceled by the consumer at any time; and

(-e-) costs $(enter amount) per $100 of outstanding principal amount of insured property.

(IV) Policies or certificates extending coverage addressed in this clause shall be provided to the insured person at the time coverage is accepted, along with claim forms accompanied by written instructions on filing claims under the coverage. Such policies or certificates provided to insureds shall include the disclosure set out in subclause (III) of this clause, subject to the same type face and size requirements.

(ii) Coverage resulting from commercial credit transactions involving installment [~~Installment~~] sales, leased property, and deferred payment contracts [~~policies~~] (non-regulated). For purposes of this subparagraph, a commercial credit transaction is one which does not fall within the meaning of an open or closed end consumer credit transaction that is a retail installment transaction under clause (i) of this subparagraph. The credit property insurance coverage addressed in this clause covers [~~Covering~~] the interest of a vendor[~~,~~] or mortgagee[~~, and lessor~~] in property sold in a commercial

transaction under an installment sales contract, or a partial or deferred payment contract ;[,] and the interest of a lessor in property [~~or~~] leased. Credit property insurance [~~Such~~] policies subject to this clause must include coverage while in transit and may be extended to include the interest of the vendee, mortgagor, or lessee, but in no event shall the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(R)-(OO) (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 January 26, 1998.

TRD-9801145
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 463–6327

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Subchapter K. Commercial Multi-Peril Policies

28 TAC §5.9101

The Texas Department of Insurance proposes an amendment to §5.9101, which concerns the writing of commercial multi-peril package policies and the filing of policy forms, endorsements, and rates for commercial multi-peril insurance. The amendment is necessary to conform this section to amendments to the Insurance Code, Article 5.13-2 enacted by Senate Bill 1499, 75th Texas Legislature, 1997. The writing of multi-peril policies was authorized through the enactment of Article 5.81. Under 5.81, the Texas Department of Insurance is authorized to prescribe policy forms and rates for multi-peril policies of insurance and the commissioner has the authority to choose the procedure under any of the subchapters of Chapter 5 of the Insurance Code for the purpose of determining the regulatory scheme for commercial multi-peril rates and forms. In 1992, the State Board of Insurance selected, through the adoption of §5.9101, the regulatory scheme in Article 5.13-2, applicable to general liability lines and commercial property lines of insurance, to govern the regulation of forms and rates for commercial multi-peril policies. Senate Bill 1499 amended subsection (e), section 8, of Article 5.13-2 to delete the requirements that forms submitted by individual insurers for approval must provide coverage equivalent to that provided in the policy forms used for these lines of coverage and that an endorsement may not reduce coverage provided under the approved policy form. Since there is no longer an equivalent coverage requirement for multi-peril form filings and no longer a prohibition against filing multi-peril endorsements that reduce coverage, §5.9101 must be amended to reflect these statutory changes.

David Durden, deputy commissioner for property and casualty lines has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section and there will be no effect on local employment or the local economy.

Mr. Durden has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the section will be that §5.9101 will be in accord with Article 5.13-2 and it is anticipated that it will increase competition in the commercial insurance marketplace as insurers provide a wider variety of products designed to meet the specific needs of insurance consumers. This proposed amendment will also simplify the form filing procedure for the insurers who make individual policy form and endorsement filings. It is anticipated that the proposed amendment will give insurers greater flexibility to adapt their products or respond in a timely fashion to changes in the insurance marketplace. There is no anticipated adverse economic effect on large or small insurers who are required to comply with the proposed amendment. It is anticipated that there would be a benefit to both large and small insurers because with the elimination of the equivalent coverage requirement from policy forms and endorsement filings, insurers will be able to file the same forms in Texas that they file nationwide, thereby, reducing the insurers' cost of doing business in Texas. Although insurers may have some costs associated with making new filings, those additional costs may be offset by the fact that the insurers will not have to produce a Texas specific policy form or endorsement which is different from the other programs that the insurers write in other states.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P. O. Box 149104, Mail Code 104-5A, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 5.13-2, 5.81, 5.98, and 1.03A; and the Government Code §§2001.004-2001.038. Article 5.13-2 regulates the policy forms submitted by insurers for approval in general liability, commercial property, commercial casualty, and medical professional liability insurance. Article 5.81 authorizes the commissioner to approve forms for multi-peril policies of insurance and to adopt rules as in the best judgment of the commissioner are necessary and desirable to carry out the purposes and objectives of this article. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt rules and regulations, which must be for general and uniform regulation, for the conduct and execution of the duties and functions of the department only as authorized by a statute. The Government Code, §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this section: Insurance Code, Articles 5.13-2 and 5.81

§5.9101. Multi-peril Policies.

(a)-(e) (No change.)

(f) Forms.

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

(5) If the Texas Department of Insurance promulgates standard commercial multi-peril insurance forms, endorsements, and other related forms, an insurer, at its discretion, may use these forms instead of the insurer's own forms for writing commercial multi-peril insurance. [~~Forms submitted by insurers for approval under this subsection must provide coverage equivalent to that provided in the policy and endorsement forms used for these lines of coverages on the effective date of this section. An endorsement may not reduce coverage provided under the approved policy form.~~]

(g) (No change.)

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

Filed with the Office of the Secretary of State, on January 26, 1998.

TRD-9801128
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463–6327

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Subchapter M. Filing Requirements

28 TAC §5.9302

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

The Texas Department of Insurance proposes the repeal of §5.9302, concerning the standards for equivalent coverage, as provided for in the Insurance Code, Article 5.13-2 §8(e), for policy forms filed by individual insurers for commercial property insurance, general liability insurance, commercial casualty insurance, and medical professional liability insurance, and as provided in 28 TAC §5.9101(f)(5) (relating to Multi-Peril Policies) for policy forms filed by individual insurers for commercial multi-peril insurance. Section 5.9302 was first adopted in 1992 in accordance with the provisions of Article 5.13-2. Article 5.13-2 was enacted in 1991 by the Legislature for the purpose of establishing a new system of regulation for the rates and forms for general liability and commercial property insurance. Section 5.9302 was adopted as part of the implementation of the new system of regulation mandated in Article 5.13-2. In 1993, Article 5.13-2 was amended to add commercial casualty insurance and medical professional liability insurance under the new system of regulation and to exempt insurers writing large risks from being required to file policy forms. Section 5.9302 was amended to reflect these statutory changes. Prior to the enactment of 5.13-2, insurers writing the lines of insurance which came under the regulation of 5.13-2 were required to use promulgated or standard and uniform policy forms. After the enactment of 5.13-2, insurers were no longer required to use promulgated and standard and uniform policy forms but could submit their own policy forms for approval. However, the individual insurer policy form filings were required to provide coverage equivalent to that provided in the policy forms used for these lines of coverage. Furthermore, filings of endorsements could not reduce coverage under the approved policy form. This equivalent coverage requirement has been evaluated by the department based on a comparison of the policy forms filed by the individual insurers to similar policy forms that were approved by the State Board of Insurance prior to and in effect on October 1, 1991. The repeal of §5.9302 is necessary because Senate Bill 1499, 75th Texas Legislature, 1997, amended Article 5.13-2 to delete the equivalent coverage requirement for individual insurer policy form filings and to delete the prohibition against filing endorsements that reduce coverage. Since there is no longer an equivalent coverage requirement for individual insurer policy form filings and no longer a prohibition against filing endorsements that reduce coverage, §5.9302 must be repealed to remove a section which no longer has a statutory basis.

David Durden, deputy commissioner for property and casualty lines has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and there will be no effect on local employment or the local economy.

Mr. Durden has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal will be that a section of the Texas Administrative Code that no longer has a function will be removed. It is anticipated that the proposed repeal will increase competition in the commercial insurance marketplace as insurers provide a wider variety of products designed to meet the specific needs of insurance consumers. This proposed repeal will also streamline the policy filin7g procedures for insurers who make individual policy form filings. It is further anticipated that the proposed repeal will give insurers greater flexibility to adapt their products or respond in a timely fashion to changes in the insurance marketplace. There is no anticipated adverse economic effect on large or small insurers who are required to comply with the proposed repeal. It is anticipated that there would be a benefit to both large and small insurers because with the elimination of the equivalent coverage requirement from policy forms and endorsement filings, insurers will be able to file the same forms in Texas that they file nationwide, thereby, reducing the insurers' cost of doing business in Texas. Although insurers may have some costs associated with making new filings, those additional costs may be offset by the fact that the insurers will not have to produce a Texas specific policy form or endorsement which is different from the other programs that the insurers write in other states.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P. O. Box 149104, Mail Code 104-5A, Austin, Texas 78714-9104.

The repeal is proposed under the Insurance Code, Articles 5.13-2, 5.81, 5.98, and 1.03A; and the Government Code, §2001.004-2001.038. Article 5.13-2 regulates the policy forms submitted by insurers for approval in general liability, commercial property, commercial casualty, and medical professional liability insurance. Article 5.81 authorizes the commissioner to approve forms for multi-peril policies of insurance and to adopt rules as in the best judgment of the commissioner are necessary and desirable to carry out the purposes and objectives of

this article. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt rules and regulations, which must be for general and uniform regulation, for the conduct and execution of the duties and functions of the department only as authorized by statute. The Government Code, §2001.004-2001.038 (Administrative Procedures Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: Insurance Code, Articles 5.13-2 and 5.81

§5.9302. Equivalent Coverage Requirements.

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 January 26, 1998.

TRD-9801129
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463–6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 13. Land Resources

Land Sales-Preferential Right to Purchase Certain Former Superconducting Super Collider Tracts

31 TAC §§13.60-13.67

The General Land Office (GLO) proposes new §§13.60-13.67, concerning procedures for notification and for exercise of the preference right to purchase certain tracts of land conveyed to the state for use by the superconducting super collider research facility in Ellis County, Texas, as set forth in Teas Natural Resource Code Annotated, §31.309.

Spencer Reid, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no anticipated fiscal implications as a result of the administration of these rules.

Mr. Reid also has determined that, for the first five-year period the rules are in effect, the public benefit anticipated as a result of administration and compliance with these rules is to streamline the process for compliance with Texas Natural Resource Code, §31.309. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Interested parties may submit comments to Carol Milner, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. Comments must be submitted by 5:00 p.m. on Friday, February 26, 1998.

The new subchapter is proposed under Texas Natural Resource Code, §31.309, which authorizes the commissioner to promulgate rules necessary to implement §31.309.

The Texas Natural Resource Code Annotated, §31.309 is affected by this proposed rulemaking.

§13.60. Purpose and Scope

The purpose of this subchapter is to provide procedures for notification and for exercise of the preference right to purchase certain property conveyed to the state for use by the superconducting super collider research facility in Ellis County, Texas, as set forth in Texas Natural Resource Code Annotated, §31.309.

§13.61. Definitions.

The following words and terms, when used in this subchapter, mean the following unless the context clearly indicates otherwise:

Conveyed - The transfer of title whether by deed or condemnation for use by the superconducting super collider facility in Ellis County, Texas.

GLO - General Land Office

Heirs - One entitled to inherit the estate of a decedent under a lawful will, or under the laws of descent and distribution then in effect in the State of Texas.

Person - An individual, a duly organized corporation, business trust, estate, trust, partnership, limited liability company, association or other business entity, or a government or governmental subdivision or agency.

Preference right - A statutory priority right to purchase property in accordance with this subchapter.

Property - A tract of land acquired by the state by deed or condemnation for use by the superconducting super collider research facility in Ellis County, or portion thereof, which has not been offered for sale, or sold prior to January 1, 1998.

Successors - A subsequent holder of title to all of the assets of another entity by acquisition or merger or as otherwise permitted by law.

TNRLC-The Texas National Research Laboratory Commission, a state agency which ceased to exist by act of the legislature, and whose authority to manage, control, market and dispose of real property and interests in real property was transferred to the GLO under the Government Code, §465.018(d).

§13.62. Preference Right.

(a) There is no preference right as to any property sold, under contract for sale, or offered for sale prior to January 1, 1998. For purposes of this section, the phrase "offered for sale" shall include, any of the following activities:

(1) the publication of a list of properties to be sold by sealed bid sale held by the GLO under the provisions of the Texas Natural Resource Code Annotated, §31.158; or

(2) any actions taken to solicit offers for the sale of property, including without limitations, the placement of "For Sale" signs, advertisement for sale in newspapers, magazines, brochures, flyers, or the internet.

(b) As to property not offered for sale prior to January 1, 1998, a preference right shall accrue to a person, or the person's heirs or successor, who conveyed land to the state for use by

the superconducting super collider research facility in Ellis County, Texas.

(c) Before the GLO initiates formal action to sell a particular tract of property to any other party, notice shall be given to a person with a preference right, in accordance with the provisions of §13.63 of this subchapter (relating to Notice of Preference Right).

§13.63. Notice of Preference Right.
The notice of preference right shall contain:

(1) the date of the notice;

(2) a legal description of the property subject to the preference right;

(3) an application to purchase the tract in a form prescribed by the GLO;

(4) a statement informing the addressee that in order to exercise the preference right, the addressee must deliver a signed application to the GLO at the address set forth in the application on or before the 30 days after the date of the notice, and pay to the GLO a fee in the amount of $300.00, which shall be applied to the cost of an appraisal of the property described in the application. The required fee shall not be refundable and shall not apply to the purchase price of the property from the GLO; and

(5) a statement that within 15 days after receipt of written notice from the GLO of appraised value, the addressee shall, enter into a contract to purchase the property described in the application at the appraised value, on the terms and conditions contained in a form of purchase contract prescribed by the GLO, or the preference right is conclusively deemed to have been waived.

§13.64. Method of Service of Notice.
(a) The notice required by §13.63 of this subchapter (relating to Notice of Preference Right) shall be given by:

(1) certified mail, return receipt requested, to the last known address of the person who conveyed the tract or any portion of the tract to the state, as reflected in the files and records of the GLO; and

(2) publication of a "Notice of Preference Right to Purchase Certain Former Superconducting Super Collider Property" in at least three issues of a daily newspaper published in Waxahachie, Texas, and in at least three issues of a daily newspaper in the Dallas/Ft. Worth Metroplex. The last date of publication shall be 30 days prior to the deadline, for application established in §13.63 of this subchapter. The notice shall be addressed to all prior owners (their heirs and successors) who conveyed the property subject to the preference right.

(b) Notice given by certified mail shall be deemed delivered upon deposit in a US Postal Service depository, postage prepaid, regardless of whether the notice is returned to the GLO as unclaimed, undeliverable or for any other reason noted by the US Postal Service.

(c) Notice given by publication shall be deemed received the last date of publication.

§13.65. Proof of Notice.
The GLO shall maintain copies of all notices provided pursuant to this subchapter. The records of the GLO shall be conclusive proof of the fulfillment of notice requirements of this subchapter.

§13.66. Exercise of Preference Right.
A person or a person's heirs or successors entitled to a preferential right to purchase shall strictly comply with the deadlines and other conditions of sale set forth in this subchapter or any contract of sale, or the preference right shall be deemed waived without further action of the GLO.

§13.67. Permitted Exceptions .

The property sold under this subchapter shall be conveyed subject to any easement, covenants, restrictions, rights of ways and any other matter of record in the official records of the GLO or Ellis County, Texas, and any other matters contained in the contract of sale.

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 January 26, 1998.

TRD-9801149
Garry Mauro
Commissioner
General Land Office
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 305–9129

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TITLE 34. PUBLIC FINANCE

Part V. Texas County and District Retirement System

Chapter 107. Miscellaneous Rules

34 TAC §107.4

The Texas County and District Retirement System proposes new §107.4, concerning the establishment of rules for determining the amortization period for the funding of prior service credit. The proposed rule proceeds from the specific authority granted to the board of trustees to establish rules for determining the amortization period as set forth in the Government Code, Chapter 844, Subchapter H, §844.703(f). The rule is being proposed to assist in providing a funding mechanism that is appropriate for the current benefit plan design and budgetary considerations of subdivisions participating in the Texas County and District Retirement System.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Horton also has determined that for each year of the first five years the rule is in effect the anticipated public benefit will be a more orderly and consistent funding of pension benefits which in turn produces a more predictable and consistent pension liability. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

This new section is proposed under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 844, Subchapter H, §844.703 is affected by this proposed new rule.

§107.4. Amortization Period.

In accordance with Government Code, Chapter 844, Subchapter H, §844.703(f), for purposes of determining the amortization period for annually determined contribution rate (ADCR) plans, the following rules are effective for plan years beginning after December 31, 1998 based on actuarial valuations on and after December 31, 1997.

(1) The prior service contribution rate prescribed by §844.703(b) shall be based on an open amortization period of 30 years.

(2) If a subdivision has an overfunded obligation instead of an unfunded obligation in its plan, the negative prior service contribution rate prescribed by §844.703(b) shall be based on an open amortization period of 30 years.

(3) If the governing body of a subdivision has adopted an ADCR plan and has also elected to contribute at a higher integer contribution rate as allowed by §844.703(d), the amortization period for the actuarially determined contribution rate shall be determined from one of the two rules stated above. The amortization period for the higher integer contribution rate shall be calculated in each annual actuarial valuation as the number of years required to amortize the unfunded obligation in that actuarial valuation, assuming that the employer contribution rate available to amortize the unfunded obligation shall be equal each year in the future, beginning one year after the actuarial valuation date, to the excess of the higher integer contribution rate over the normal cost contribution rate determined in that actuarial valuation.

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 January 26, 1998.

TRD-9801121
Terry Horton
Director
Texas County and District Retirement System
Proposed date of adoption: March 12, 1988
For further information, please call: (512) 328–8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Interaction with the Public

37 TAC §81.36

The Texas Youth Commission (TYC) proposes new §81.36, concerning notification to public and private schools. The new section will establish a procedure for TYC staff to notify public and private school personnel of the arrest, detention or referral of a TYC paroled youth and any subsequent disposition of that arrest or detention.

Terry Graham, Assistant Deputy Executive Director for Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient communication between the Texas Youth Commission and the local school districts in compliance with laws amended during the 75th legislative session. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.036, which provides the Texas Youth Commission with the authority to cooperate with all existing agencies and encourage the establishment of programs, both local and statewide, the object of which is services to delinquent and predelinquent youth of this state.

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

§81.36. Notification to Public and Private Schools.

(a) Purpose. The purpose of this rule is to provide a procedure for Texas Youth Commission (TYC) staff to notify public and/or private school officials when certain action is taken against a TYC paroled youth.

(b) The assigned TYC parole officer of a youth who transfers from a school or is subsequently removed from a school and later returned to a school or to a different school district shall notify the new school officials of:

(1) an arrest/detention/referral to juvenile court, the date of the action, and the offense/allegation; or

(2) an adjudication/conviction, date of the action, and the offense for which the action was taken.

(c) The oral and written notice must include sufficient detail so that the official can determine whether there is reasonable belief that the youth has engaged in conduct defined as a felony.

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 January 26, 1998.

TRD-9801136
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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Chapter 87. Treatment

Subchapter A. Program Planning

37 TAC §87.3

The Texas Youth Commission (TYC) proposes an amendment to §87.3, concerning the resocialization program. The amendment will add specific assessment information which clarifies requirements in the TYC treatment programs. For example, a

phases checklist requirement and a monthly timeline for measuring an individual youth's progress are added.

Terry Graham, Assistant Deputy Executive Director for Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be TYC's ability to better evaluate a youth's progress. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

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

§87.3. Resocialization Program.

(a) Purpose. The purpose of this rule is to identify the agency's philosophy and approach to rehabilitation of juvenile delinquents in order to reduce future delinquent [~~offensive~~] behavior and increase accountability of the youth and programs.

(b) Explanation of Terms Used.

(1) Resocialization Program - the basic program implemented in all Texas Youth Commission (TYC) [~~TYC~~] facilities.

(2) Phases of Resocialization - five competency based [~~progressive~~] phases in the resocialization program used to determine a youth's progress in the program.

(3) Phases Checklist - standardized list of measurements used at every program for individual determination of phase completion.

(c) (No change.)

(d) All aspects of the TYC resocialization program will be competency based with clearly defined performance [~~behavior~~] expectations. Individual progress will be measured [~~regularly~~] monthly and based upon all identified treatment needs and strengths.

(e) Phases of resocialization are [~~generally~~] progressive. Youth will be assessed by a treatment team [~~the primary service worker~~] at each residential placement for the appropriate phase. Parole youth will be assessed by the assigned parole officer. Higher phases are associated with increased expectations of responsibility and decreased need for direct staff supervision.

(f)-(k) (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 January 26, 1998.

TRD-9801137

Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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Subchapter B. Special Needs Offender Programs

37 TAC §87.51

The Texas Youth Commission (TYC) proposes an amendment to §87.51, concerning special needs offenders. The amendment will make more efficient use of specialized treatment resources by changing the ineligibility status of youth who have been identified as having a need for specialized treatment and have not completed phase three of the TYC resocialization program. Priority placement will be given to youth who have completed phase three.

Terry Graham, Assistant Deputy Executive Director for Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of state resources and greater protection for the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to correct the socially harmful tendencies of a child committed to it by requiring the child to participate in moral, academic, vocational, physical and correctional training activities.

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

§87.51. Special Needs Offenders.

(a)-(e) No change.)

(f) Youth will be placed in a Capital Offender, Sex Offender, and Chemical Dependency specialized treatment program as resources are available. [~~after completion of phase three of resocialization which demonstrates motivation and behavioral compliance as necessary for specialized treatment.~~] Priority will be given to youth who have completed Phase III.

(g) (No change.)

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

Filed with the Office of the Secretary of State, on January 26, 1998.

TRD-9801138
Steve Robinson
Executive Director

Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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Chapter 91. Program Services

Subchapter C. Youth Employment and Work

37 TAC §91.61

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

The Texas Youth Commission (TYC) proposes the repeal of §91.61, concerning youth employment and work. This section is being repealed to allow for the publication of a new section. The new section is also aimed at providing TYC youth with opportunities for compensated and uncompensated work experience.

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be increased structure within TYC programs and greater public protection. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§91.61. Youth Employment and Work.

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 January 26, 1998.

TRD-9801140
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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37 TAC §91.61

The Texas Youth Commission (TYC) proposes new §91.61, concerning youth employment and work. The new section will provide TYC youth with opportunities for compensated and uncompensated work to allow youth in residential facilities to experience the responsibilities and rewards of constructive work.

Terry Graham, Assistant Deputy Executive Director for Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased structure within TYC programs and greater public protection. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require the child to participate in academic and vocational activities.

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

§91.61. Youth Employment and Work.

(a) Purpose. The purpose of this rule is to provide opportunities for compensated and uncompensated work in order to allow youth in residential facilities to experience the responsibilities and rewards of constructive work.

(b) Youth shall not be permitted to perform any work prohibited by state or federal regulations or statutes pertaining to child labor.

(c) Repetitive, purposeless, degrading make-work is prohibited.

(d) Training and work programs will utilize the advice and assistance of labor, business and industrial organizations.

(e) Youth in TYC facilities may be required to do the following kinds of work without compensation:

(1) assignments which are part of an agency educational curriculum (vocational training);

(2) tasks performed as community service; and/or

(3) routine housekeeping chores which are shared by all youth in the facility, including facility maintenance.

(f) Youth in TYC facilities may volunteer to perform work without compensation as restitution for damage done by youth.

(g) Youth may be paid for performing tasks incidental to facility operations if such employment is part of the youth's treatment plan.

(h) Youth will be paid for participation in the private sector youth industries program.

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

Filed with the Office of the Secretary of State, on January 26, 1998.

TRD-9801139
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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37 TAC §91.65

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

The Texas Youth Commission (TYC) proposes the repeal of §91.65, concerning payment for youth employment by TYC. This section is being repealed and information is consolidated with proposed amendments to GAP §91.61 of this chapter concerning youth employment and work. The amendments will provide TYC youth with opportunities for compensated and uncompensated work experience.

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a new section and greater protection for the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§91.65. Payment for Youth Employment by TYC.

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 January 26, 1998.

TRD-9801141
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 8, 1998
For further information, please call: (512) 424–6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 45. Community Living Assistance and Support Services

The Texas Department of Human Services (DHS) proposes new chapter 45, Community Living Assistance and Support Services, concerning suspension and termination of services, program and claim payment requirements, and fiscal monitoring, for its Community Living Assistance and Support Services (CLASS) program. The purpose of the new chapter is to establish rules for the CLASS program. These rules clarify when services to a participant must be suspended and when services must be terminated. The process for suspension or termination of services is defined. Also defined are the documentation requirements for provider payment, specifying what constitutes administrative and financial errors and establishing provider sanctions for errors identified. A sanction of 100% of the paid unit rate is applied to financial errors identified on the documentation reviewed, eliminating payment for services not authorized or not delivered according to program rules. A sanction of 12% of the unit rate is applied to the paid units with administrative errors on the documentation reviewed, reducing payment for administrative services not performed. Administrative and financial errors are not extended beyond the documentation reviewed. Compliance with these rules improves fiscal accountability.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to initiate a sanction of 12% for administrative errors, which is the percentage of the reimbursement paid by the department that is attributed to administration by the provider, and initiate a sanction of 100% for financial errors eliminating payment for services that are not authorized and reducing the cost of services that are not delivered according to program rules and policies as established in current rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Don Mann at (512) 438-3642 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-010, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* .

Subchapter B. Suspension and Termination of Services

40 TAC §§45.201, 45.203, 45.205, 45.207, 45.209, 45.211, 45.213, 45.215

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§45.201. Termination of Services to Current Participants.

(a) The case management agency (CMA) with concurrence by the Texas Department of Human Services (DHS) must terminate Community Living Assistance and Support Services (CLASS) services if one or more circumstances specified in paragraphs (1)-(17) of this subsection occur. The CMA and direct services agency (DSA) must provide written documentation to DHS to support the reason for denial of services.

(1) The participant leaves the state for more than 90 days or moves to a county in which the CLASS program does not exist.

(2) The participant dies.

(3) The participant has resided in an institutional setting for longer than 120 days. An institution includes an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home or intermediate care facility for persons with mental retardation/related condition (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances.

(4) The participant requests in writing that services end.

(5) The participant is not financially eligible for Medicaid benefits.

(6) The participant does not meet the level of care criteria for ICF-MR/RC.

(7) The estimated cost of the CLASS services necessary to adequately meet the needs of the participant exceeds the CLASS cost ceiling.

(8) Two DSA providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical, nursing, and social needs cannot be met adequately in the participant's residence.

(9) The participant/responsible party or court-appointed guardian refuses to sign the individual service plan (ISP). A referral will be made to the county judge to determine whether the court-appointed guardian is acting in the best interests of the CLASS participant.

(10) The participant refuses to comply with his ISP/individual program plan, including situations in which he refuses services and threatens his own health and safety.

(11) The participant or someone in the participant's home deliberately threatens the health or safety of the service provider.

(12) The participant is incarcerated for more than 30 days.

(13) The participant has no need for habilitation services as determined by the interdisciplinary team.

(14) The participant or someone in the participant's home has subjected the person providing services to sexual harassment.

(15) The participant or someone in the participant's home has a substantiated pattern of discrimination against the service provider(s) on the basis of race, color, national origin, age, sex, disability, political beliefs, or religion that has not improved with appropriate intervention.

(16) The participant or someone in the participant's home has a substantiated use of illegal drugs or has illegal drugs readily available within sight of the service provider.

(17) The participant fails to pay his qualified income trust copayment.

(b) Following approval by DHS, the case manager provides written notice to the participant and provides the DSA of the effective date of termination and provides the participant with written notice of the right to appeal.

(c) If the participant appeals the denial within 12 days of written notification, the case manager continues CLASS services until notification of the decision by the DHS hearing officer. The case manager may not reduce services until the outcome of the appeal is known. Services do not continue during the appeal process in situations where the participant has been determined to be a threat to the health and safety of himself or others.

§45.203. Automatic Suspension of Community Living Assistance and Support Services (CLASS).

The case management agency and direct services agency must automatically suspend CLASS services to a participant when:

(1) the participant is admitted to an institution. An institution includes acute care hospital, state hospital, rehabilitation hospital, state school, intermediate care facility for persons with mental retardation, or a nursing home;

(2) the participant temporarily leaves the service area for vacations or other personal business unless special arrangements have been authorized by the direct services agency or the Texas Department of Human Services (DHS);

(3) the participant dies;

(4) the participant requests in writing that services end;

(5) the participant's physician refuses to sign orders or rescinds existing orders for the service;

(6) DHS denies the participant's eligibility;

(7) the participant or someone in the participant's home deliberately threatens the health or safety of the service provider;

(8) DHS terminates the contract with the provider; or

(9) the participant is incarcerated.

§45.205. Suspension of Community Living Assistance and Support Services for Cause.

The direct services agency and case management agency may suspend services with approval by the Texas Department of Human Services and documentation to support that one or more of the following has occurred:

(1) The participant or someone in the participant's home sexually harasses the service provider(s).

(2) The participant or someone in the participant's home has a pattern of discrimination against the service provider(s) on the basis of race, color, national origin, age, sex, disability, political beliefs, or religion that has not improved with appropriate intervention.

(3) The participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

§45.207. Notification of Suspension.

(a) The direct services agency (DSA) must verbally notify the case manager or staff in the case manager's office about the reason the DSA agency suspended services within 24 hours after service suspension. Written notification on the case information form must be sent to the case manager within two days of service suspension.

(b) The case manager performs any necessary face-to-face contacts necessary to evaluate and document the reasons for suspension described in §45.203(a)(3)-(5) and (7) of this title (relating to Automatic Suspension of Community Living Assistance and Support Services) and §45.205(a)(1)-(3) of this title (relating to Suspension of Community Living Assistance and Support Services for Cause). The case manager sends to the Texas Department of Human Services (DHS) Community Living Assistance and Support Services (CLASS) program staff all written documentation provided by the DSA and case manager to substantiate the suspension within five days from the suspension.

(c) The case manager, DSA, and DHS CLASS program staff review all written and verbal documentation provided by the DSA and other individuals connected with the suspension within five days from the date the suspension occurred.

(d) If the documentation does not support the suspension of services as determined by DHS CLASS program staff, the DSA will be notified to reinstate services to the participant.

(e) If the documentation does support the suspension of services as determined by DHS CLASS program staff, the case manager will notify the participant that CLASS services will be terminated as set out in §45.201 of this title (relating to Termination of Services to Current Participants) and inform them of the right to appeal.

§45.209. Sanction.

The Texas Department of Human Services may sanction up to and including contract termination any provider agency that has:

(1) suspended services to a participant for a reason other than what is allowed in §45.203 of this title (relating to Automatic Suspension of Community Living Assistance and Support Services) or §45.205 of this title (relating to Suspension of Community Living Assistance and Support Services for Cause); or

(2) uses the information cited in §45.203 of this title (relating to Automatic Suspension of Community Living Assistance and Support Services) or §45.205 of this title (relating to Suspension of Community Living Assistance and Support Services for Cause) to suspend a participant when the provider agency knew or should have known that the cited information did not apply to the participant.

§45.211. Waiting List.

The applicant is placed on the Community Living Assistance and Support Services (CLASS) waiting list on a first-come, first-served basis. The applicant must:

(1) contact the Texas Department of Human Services CLASS administrative assistant or program staff and provide enough information to complete the CLASS application/summary of applicant's needs for services form; and

(2) be responsible for the update of any information such as address and telephone number; and

(3) reside in the county where they are placing their name on the waiting list if CLASS services are available in that county; or

(4) place their name on the waiting list in the nearest county in which CLASS services are available if CLASS services are not available in the county in which they currently reside.

§45.213. Use of Non-Waiver Services.

Community Living Assistance and Support Services (CLASS) applicants and participants must utilize all services available through other funding sources. As a Medicaid program, the CLASS program is payor of last resort.

§45.215. Authorization of Services.

Units of service must be prior authorized on the individual service plan to be eligible for reimbursement through the Community Living Assistance and Support Services program except in cases of documented medical emergencies.

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 January 26, 1998.

TRD-9801125
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Subchapter C. Program and Claim Payment Requirements

40 TAC §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.315, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, 45.343

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§45.301. Service Array for Community Living Assistance and Support Services (CLASS) Providers.

CLASS providers must provide the array of CLASS Services identified in paragraphs (1-11) of this section in accordance with the CLASS individual service plan form, through its own employees, subcontractors, or personal service agreements with qualified individuals. Services include:

(1) habilitation;

(2) nursing;

(3) physical therapy;

(4) occupational therapy;

(5) speech pathology;

(6) psychological services;

(7) adaptive aids/vehicle modifications;

(8) minor home modifications;

(9) respite care (in-home);

(10) respite (out-of-home); and

(11) case management.

§45.303. Cost Effective Purchases of Adaptive Aids.

(a) For any single adaptive aid expenditure costing less than $500, the direct services agency (DSA) must:

(1) determine and document the needs and preferences of the participant for the adaptive aid;

(2) document the necessity for the adaptive aid;

(3) consider renting the adaptive aid on a short-term basis if the participant's needs or desires cannot be accurately determined at the time of the assessment;

(4) obtain comparative price quotes or use a price list to document prices of the adaptive aid from a minimum of three suppliers or annually select a supplier based on the lowest prices from the quotes/price list for the main types of adaptive aids that the agency has been purchasing;

(5) document the justification of the selection, including cost, delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties. For those suppliers selected, document in the vendor records the names of the suppliers from whom all quotes/price lists were obtained, the amount of the quotes/price lists, the items for which the quotes/price lists were requested, and the dates the quotes/price lists were obtained; and

(6) have a nurse, therapist, or other appropriate professional conduct a home visit within 14 Texas Department of Human Services (DHS) work days from the date of delivery to verify the adaptive aid meets the needs of the participant, that orientation was provided to the participant in the use of the adaptive aid, and document completion of purchase and satisfaction of the participant.

(b) For any single adaptive aid expenditure costing $500 or more, in addition to complying with the requirements listed in subsection (a)(1)-(6) of this section, the DSA must:

(1) obtain written specifications for the adaptive aid from a licensed occupational therapist, physical therapist, speech pathologist, or other appropriate professional specializing in assessments for assistive technology or adaptive aids;

(2) obtain a minimum of three written bids if not using price lists or price quotes as identified under subsection (a)(5)-(6) of this section, and document the justification of the selection including cost, delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties; and

(3) document justification when not accepting the lowest bid, such as, delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties.

§45.305. Time Frames for Adaptive Aids Costing Less Than $500.

(a) The direct services agency (DSA) must ensure purchase and delivery of any adaptive aid/vehicle modification within 14 Texas Department of Human Services (DHS) work days from the date purchase of the adaptive aid/vehicle modification is authorized, using either the effective date of the individual service plan form, or the date the form is received, whichever is later.

(b) If the DSA cannot ensure delivery of an adaptive aid/vehicle modification within 14 DHS work days from the date of receipt of DHS's authorization, before the 14th day the agency must submit to the case manager the case information form containing an explanation why the adaptive aid/vehicle modification cannot be delivered within the required time frame and a new proposed date for delivery.

§45.307. Time Frames for Adaptive Aids Costing $500 or More.

(a) The direct services agency (DSA) must ensure purchase and delivery of any adaptive aid/vehicle modification within 30 Texas Department of Human Services (DHS) work days from the date purchase of the adaptive aid/vehicle modification is authorized, using either the effective date of the individual service plan form, or the date the form is received, whichever is later.

(b) If the DSA cannot ensure delivery of an adaptive aid/vehicle modification within 30 work days from the date of receipt of DHS's authorization, before the 30th day the agency must submit to the case manager the case information form containing an explanation why the adaptive aid/vehicle modification cannot be delivered within the required time frame and including a new proposed date for the delivery.

§45.309. Cost Effective Purchases of Medical Supplies.

The direct services agency must:

(1) prior to the selection of medical supplies, obtain comparative price quotes or use a price list to document prices of the medical supplies from a minimum of three suppliers;

(2) at least annually select supplies based on the lowest prices from the quotes/price list for the main types of supplies that the agency has been purchasing, and document the justification of the selection including cost, delivery time of item and record of quality services; and

(3) document the basis for selection and for those selected, document in the vendor records the names of the suppliers from whom all quotes/price lists were obtained, the amount of the quotes/price lists, the items for which the quotes/price lists were requested, and the dates the quotes/price lists were obtained.

§45.311. Time Frames for Medical Supplies.

(a) The direct services agency (DSA) is responsible for assuring the purchase and delivery of any authorized medical supplies within five Texas Department of Human Services (DHS) work days from the waiver service initiation date.

(b) On existing cases, the DSA must deliver medical supplies within five DHS work days from the date purchase of the supplies is authorized, counting from the effective date of the individual service plan form, or the date the form is received, whichever is later.

(c) If the DSA cannot ensure delivery of a medical supply within five DHS work days from the date of receipt of DHS's authorization, the DSA must submit the case information form to the case manager before the fifth day, containing an explanation why the medical supply cannot be delivered within the required time frame and a new proposed date for the delivery.

§45.313. Time Frames for Emergency Purchases of Medical Supplies.

If the direct services agency (DSA) or case manager identifies a need for the emergency purchase and delivery of a medical supply, the

DSA must deliver the item within two Texas Department of Human Services work days from the date that the need for the medical supply is identified.

§45.315. Medical Supplies on Hand.
At least twice a year, the direct services agency must verify the quantity of the medical supplies that the participant has on hand, and if necessary, adjust the service plan, or modify the delivery schedule for the medical supplies. The results of this verification must be documented in the case conference notes.

§45.317. Freight Charges for Medical Supplies and Adaptive Aids.
The direct services agency must assure that if medical supplies or adaptive aids are delivered to the participant by means of any commercial carrier, such as United Parcel Services or the United States Postal Service, the most cost-effective carrier is used. Overnight delivery should not be used unless it is an emergency purchase that cannot be purchased locally and delivered by the next day after determining the need.

§45.319. Cost Effective Purchases of Minor Home Modifications.
The direct services agency (DSA) must:

(1) determine and document the needs and preferences of the participant for the minor home modification;

(2) document the necessity for the minor home modification;

(3) obtain written specifications for any project expenditure costing $1000 or more which will be used to procure bids and validate the completed job;

(4) request a minimum of three written bids based on the specifications for any single expenditure costing $1000 or more;

(5) select a bidder to provide the modification and document the justification when not selecting the lowest bid for the selection, including cost, completion time of modification, record of quality service, timely response to repair requests, and warranties; and

(6) inspect the minor home modification for completion, compliance with the written specifications, if applicable, and quality of workmanship within seven Texas Department of Human Services (DHS) work days from the date the work is completed.

(A) The DSA must ensure that a qualified person inspects completed work to ensure all work was done to written specifications, if applicable, and the Texas Accessibility Standards.

(B) The inspector cannot be the attendant.

(C) Once the inspection is concluded and the modification is completed, the DSA must send the case information form to the case manager within seven DHS work days from the date the modification is completed.

§45.321. Time Frames for Minor Home Modifications Costing $1000 or More.

(a) The Community Living Assistance and Support Services direct services agency (DSA) is responsible for assuring the completion of all minor home modifications within 60 Texas Department of Human Services (DHS) work days from the date the minor home modification is authorized, counting from either the effective date of the individual service plan form, or the date the form is received, whichever is later.

(b) If the modification cannot be completed within 60 DHS work days from the date the minor home modification is authorized, the DSA must submit the case information form to the case manager prior to the 60th day, explaining why the modification cannot be completed on time and including a new projected date of completion for the modification.

§45.323. Time Frames for Minor Home Modifications Costing Less Than $1000.

(a) The Community Living Assistance and Support Services direct services agency (DSA) is responsible for assuring the completion of all minor home modifications within 30 Texas Department of Human Services (DHS) work days from the date the minor home modification is authorized, counting from either the effective date of the individual service plan form, or the date the form is received, whichever is later.

(b) If the modification cannot be completed within 30 DHS work days from the date the minor home modification is authorized, the DSA must submit the case information form to the case manager prior to the 60th day, explaining why the modification cannot be completed on time and including a new projected date of completion for the modification.

§45.325. Landlord Approval for Minor Home Modifications.
Prior to beginning the home modifications, the direct services agency must obtain written approval from the owner of the building for the proposed modifications if the rental agreement does not provide such approval. Additionally, the direct services agency must obtain any applicable building permits prior to starting the home modifications.

§45.327. Accountability for Minor Home Modifications.
If a minor home modification requires repair or replacement within one year of completion, the Community Living Assistance and Support Services direct service agency must repair or replace the minor home modification without billing the Texas Department of Human Services or the participant, unless

(1) the finished modification met appropriate specifications and bid requirements agreed upon before the job was started; or

(2) the repair or replacement is required due to circumstances beyond the control of the participant or participant's family members, or due to abuse by the participant or family members.

§45.329. Completion of Minor Home Modifications.
The Community Living Assistance and Support Services direct services provider must maintain in the client record a copy of the fully executed receipt for the minor home modification attesting to the quality of the workmanship and whether or not the participant is satisfied.

§45.331. Billable Units.
The following activities may be billed through the Community Living Assistance and Support Services (CLASS) program by the CLASS providers.

(1) Nursing services:

(A) direct participant contact;

(B) participation on the interdisciplinary team (IDT):

(i) when the participant has an identified need for the service; and

(ii) for actual time spent in the capacity of the respective discipline. Time spent as the official representative of the direct services agency (DSA) must be billed as habilitation;

(C) time spent in delegating, training, and supervising attendants and substitutes in the delivery of nursing tasks that have been delegated;

(D) time spent in providing nursing tasks that had been delegated to an attendant in order to prevent a service break, if no attendant can be found;

(E) time spent in training family members, neighbors, and other informal support providers to provide needed nursing or personal care tasks; and

(F) time spent in performing the annual reassessment, which includes actual participant contact and documentation of assessment forms and care plan.

(2) Specialized therapy (occupational therapy, physical therapy, speech pathology):

(A) direct participant contact;

(B) participation on the IDT:

(i) when the participant has an identified need for the service; and

(ii) for actual time spent in the capacity of the respective discipline. Time spent as the official representative of the DSA must be billed as habilitation; and

(C) time for doing evaluations for specialized equipment.

(3) Habilitation services, which include:

(A) assisting with the performance of personal care tasks;

(B) performing delegated health-related tasks;

(C) training the participant to perform the activities of daily living as identified in the habilitation plan;

(D) providing reinforcement of therapy goals;

(E) participating in IDT meetings;

(F) accompanying the participant to habilitative activities as listed in the participant's individual program plan; and

(G) performing chores services for the participant.

(4) Adaptive aids/vehicular modifications and minor home modifications - delivery of a prior approved, medically necessary item or minor home modification.

(A) Billable items for medical supplies include the invoice cost, including freight charges and sales tax, of the medical supply and the requisition fee.

(B) Billable items for minor home modifications include the invoice cost of labor, materials, sales tax, and the requisition fee.

(C) Billable items for adaptive aids include the invoice cost of the item, including freight charges and sales tax, and the requisition fee.

(5) In-home respite - relief for the unpaid primary caregiver.

(6) Out-of-home respite - relief for the unpaid primary caregiver.

§45.333. Non-Billable Time and Activities.

The following activities are not considered billable activities under the Community Living Assistance and Support Services (CLASS) program for CLASS providers:

(1) supervision of habilitation attendants performing personal assistance tasks, unless the attendant is delivering nursing tasks delegated by a registered nurse;

(2) phone calls, letters, or meetings with the Texas Department of Human Services (DHS) or community resources;

(3) administrative meetings or staff meetings;

(4) in-service training, continuing education, or conferences;

(5) employee conferences or evaluations;

(6) filing claims for services;

(7) traveling to and from the participant's home;

(8) processing paperwork, completing records or reports, except for the annual reassessment;

(9) home modifications or adaptive aids/vehicular modifications that are not listed in the CLASS Provider Manual as covered items nor approved by authorized DHS staff. Billable items on the invoice include the actual cost of obtaining specifications, labor, materials, delivery and inspection costs;

(10) collateral contact when that contact is between:

(A) provider employees; and

(B) individuals providing services to participants under:

(i) personal service agreements with the CLASS provider; or

(ii) subcontracts with other CLASS agencies;

(11) billing for services that are considered to be duplicate services or mutually exclusive, as identified in §45.335 of this title (relating to Mutually Exclusive Services);

(12) "down-time" such as illness, holidays, vacation time, etc;

(13) collateral contact (telephone or face-to-face) to assist or discuss a specific participant (for example, helping access community services); and

(14) leaving a phone message on a recorder, or leaving a message with anyone other than the participant or parent/legal guardian.

§45.335. Mutually Exclusive Services.

The following waiver services are considered to be mutually exclusive and are not allowed under the waiver.

(1) A participant receiving in-home respite or out-of-home respite may not receive habilitation for the same period of time.

(2) A participant residing in an institutional setting may not receive any Community Living Assistance and Support Services (CLASS) services.

(3) CLASS cannot provide a service that is available to the participant through a non- waiver source.

§45.337. Service Claim Limits.

(a) A maximum of four hours may be billed under nursing services by the registered nurse to decide whether or not to delegate a nursing task to a direct services agency (DSA) attendant.

(b) In order to avoid service breaks, the Community Living Assistance and Support Services DSA may bill for authorized habilitation units performed by a licensed nurse for a maximum period of 10 days during the participant's individual service plan (ISP) effective period:

(1) The hours performed by the nurse may be billed at the nursing rate only if there are no attendants available to perform the needed delegated nursing tasks and only licensed nurses can be recruited.

(2) The documentation must include all efforts the provider agency made to find an attendant to deliver delegated nursing tasks to prevent a break in service.

(c) Components of minor home modifications cannot be billed without an invoice or in more than three billings.

§45.339. Claims and Service Delivery Records.

(a) The Community Living Assistance and Support Services (CLASS) provider is liable for monetary exceptions if the monthly claims do not correspond with the provider's service authorization and service delivery records.

(b) The provider must maintain the following records:

(1) approval of application of CLASS form;

(2) CLASS individual service plan form pages 1 and 2;

(3) CLASS documentation of services delivered form for any billing submitted for reimbursement or a facsimile previously approved by the waiver manager;

(4) bids for home modifications costing $500 or more;

(5) bids for any single expenditure for adaptive aids/ vehicle modifications costing $500 or more and comparative price quotes or a price list;

(6) annual comparative price quotes/lists for the purchase of medical supplies;

(7) annual comparative price quotes/lists for the purchase of adaptive aids;

(8) receipts from the contractor for minor home modifications provided, documenting the date of completion and the cost of the modification;

(9) any applicable building permits;

(10) documentation of completion of purchase;

(11) specifications for minor home modifications;

(12) receipts for the completed minor home modification from the CLASS direct services agency (DSA). The minor home modification must be completed before billing the Texas Department of Human Services for the modification and:

(A) the DSA must attest that the workmanship is acceptable;

(B) the DSA must attest that the modification is completed according to the specifications of the bid, if applicable;

(C) the CLASS documentation of services delivered form must be signed by the DSA representative;

(D) a final inspection sheet must be signed by the participant or the responsible party, the DSA representative and an inspector, stating that the home modifications were completed in accordance to the specification sheet; and

(E) document whether or not the participant is satisfied with the home modification;

(13) documentation of the annual selection of a supplier;

(14) copies of case information forms sent to the case manager upon completion of the minor home modification;

(15) receipts for the purchase of adaptive aids/vehicle modifications showing the cost of the item, the date the item was delivered to the participant, and signed confirmation delivery by the participant or responsible party;

(16) written approval from the homeowner for modifications to be made;

(17) documented justification for not accepting the lowest bids or quotes for adaptive aids, medical supplies, vehicle modifications or minor home modifications, where applicable; and

(18) documentation of the basis of the annual selection of a supplier if using price lists/price quotes.

§45.341. Monetary Exceptions.

(a) Providers of Community Living Assistance and Support Services (CLASS) must document on the CLASS documentation of services delivered form or an approved facsimile for services reimbursed on an hourly basis as authorized on the individual service plan, including:

(1) box 2 must show the month and year service was delivered;

(2) box 10 must show what type of service was delivered;

(3) section D must record the units of service delivered;

(4) section D must indicate the dates of service delivery;

(5) section E must show the name and dated signature of the individual providing waiver services or the signature of the designated representative; and

(6) the individual providing the service or designated representative must sign and date the CLASS documentation of services delivered form with the month, day, and year.

(b) If documentation does not support the monthly claims, the CLASS provider may be liable for monetary exceptions.

(c) The CLASS provider must designate a timekeeper to verify that the service units recorded on the CLASS documentation of services delivered form were worked and that the tasks assigned were completed. The timekeeper may be a registered nurse supervisor.

(d) The employee must enter the daily total time and monthly total hours. The CLASS documentation of services delivered form, or an approved facsimile, may be signed by the direct services agency (DSA) employee who has designated signature authority if an employee is unable to complete and sign the CLASS documentation of services delivered form. The CLASS provider must document in writing the reasons the employee is unable to complete and sign the CLASS documentation of services delivered form, or the approved facsimile, and must document in writing who is authorized to make these entries. The documentation may be a written statement that includes the following:

(1) the employee's name;

(2) a brief summary of what portion of the CLASS documentation of services delivered form, or the approved facsimile, the employee is unable to complete;

(3) the name and relationship of the person who has been designated to complete the form for the employee; and

(4) the authorized employee's signature and date.

(e) The timekeeper may add the monthly total of time with no exception taken, so long as the provider completes the daily total time.

§45.343. Unallowable Services.

The Community Living Assistance and Support Services program does not provide the following items to participants:

(1) purchase or long-term lease of vehicles, or vehicle repair and/or maintenance;

(2) past due expenses;

(3) income taxes;

(4) automobile, life, or accident insurance;

(5) death benefits, burial policies, or funeral expenses;

(6) costs for allowable services that have not been prior authorized;

(7) food, shelter, utilities, general home repairs, electrical upgrades from 110 volt to 220 volt outlets, major home renovations, remodeling, home furnishings, and yard work;

(8) items or services covered by other third-party resources such as private insurance, Medicare, or other Medicaid benefits;

(9) school tuition or fees, or equipment/items/services that are provided through the public school system; or

(10) swimming pools or swimming pool repairs, maintenance, or supplies.

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 January 26, 1998.

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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Subchapter D. Fiscal Monitoring

40 TAC §45.401, §45.403

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§45.401. Administrative Errors.

(a) A recoupment of 12% of the paid unit rate is the administrative error exception for services billed on an hourly basis. It represents the administrative portion of the rate and is applied to the unit(s) of service on the documentation reviewed in the Community Living Assistance and Support Services (CLASS) program. This exception is not extrapolated.

(b) Administrative errors include, but are not limited to, the items in paragraphs (1)-(3) of this subsection:

(1) Administrative errors on the Texas Department of Human Services's (DHS) documentation of services delivered form, or the prior approved facsimile, include the following:

(A) The provider agency leaves the month and year of service blank in item 2, section A. DHS applies the error to the total number of units documented on the time sheet.

(B) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant, nurse, therapist, or other professional worked. DHS applies the error to the total number of units documented on the time sheet.

(C) The timekeeper corrects the date of signature but fails to initial the correction. DHS applies the error to the number of units reimbursed after the earliest signature date.

(D) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. DHS applies the error to the total number of units documented on the time sheet.

(E) The timekeeper enters a date of signature that is before the date of the last day services are delivered. DHS applies the error to the total number of units reimbursed after the signature date.

(F) The timekeeper fails to sign CLASS documentation of services delivered form. DHS applies the error to the total number of units documented on the time sheet.

(G) The timekeeper uses a signature stamp, but fails to initial the stamped signature. DHS applies the error to the total number of units documented on the time sheet.

(H) The attendant, nurse, therapist, other professional, and/or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the documentation of services delivered form. DHS applies the error to the total number of units documented on the time sheet. If the liquid paper/correction fluid is used only on a daily entry in the record of time, DHS applies the error only to the total number of units reimbursed for that day.

(I) The attendant, nurse, therapist, other professional, and/or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. DHS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(J) The attendant fails to initial an increase in the daily time or the monthly total of hours for the pay period. DHS applies the error to the number of units reimbursed in excess of the original entry.

(K) The attendant, nurse, therapist, other professional, or other agency representative fails to sign the documentation of services delivered form or approved facsimile. DHS applies the error to the total number of units documented on the time sheet.

(L) The provider agency uses a form that has not been approved by DHS. DHS applies the error to the total number of units reimbursed while using something other than CLASS documentation of services delivered form or an approved facsimile.

(M) DHS reimburses the provider agency for nursing, therapies, psychological, habilitation, out-of-home respite, in-home respite, adaptive aids/vehicle modifications or home modifications but a valid authorization individual service plan (ISP) form, pages 1-2 and all pertinent amendments signed by the case manager, is missing for the period reimbursed to the agency. DHS applies the error to the total number of units of nursing, therapies, habilitation, etc. claimed and not covered by an valid ISP.

(N) DHS reimburses the provider agency for nursing services, but CLASS documentation of services delivered form lists "supervisory visit" in the comments section, without specifying that it is a nursing visit to supervise the delivery of delegated tasks, and there is no other documentation available that the nurse provided nursing services during the visit.

(O) The direct services agency (DSA) begins home modification procurement without using the bid specifications and materials list as approved by the Interdisciplinary Team.

(2) The following items are administrative errors resulting in recoupment of the entire requisition fee. The recoupment amount represents the administrative cost of the requisition fee.

(A) There is no documentation of services delivered form, but there is a receipt for the purchase of adaptive aids/vehicle modifications or the completion of the minor home modification.

(B) Bids were required for the purchase of an adaptive aid/vehicle modification or the completion of a minor home modification and bids were not obtained.

(C) DHS reimburses the provider for the purchase of medical supplies, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the provider has been reimbursed, or the price lists/price quotes were obtained more than 12 months before the purchase.

(D) DHS reimburses the provider for the purchase of adaptive aids, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the provider has been reimbursed, or there is no documentation available that the supplier selected on an annual basis to deliver the adaptive aids had the lowest prices for the main type of adaptive aids the agency has purchased.

(3) Administrative errors for the case management agency (CMA) include, but are not limited to, the following:

(A) The case management agency does not provide a completed ISP and an updated individual program plan within seven days from an interdisciplinary team meeting which results in the DSA providing services that at a later date are rejected because the CMA failed to submit the ISP for DHS authorization.

(B) The DSA has the case information form on record which indicates that the DSA had requested corrected service updates be made to the participant's ISP prior to providing the service and the CMA provided authorization for that service on the case information form but failed to submit a corrected ISP for DHS authorization.

§45.403. Financial Errors.

(a) A reduction of 100% of the paid unit rate is the financial error exception. This exception is applied to the unit(s) of service on the documentation reviewed in the Community Living Assistance and Support Services (CLASS) program. This exception is not extrapolated.

(b) Financial errors include, but are not limited to, the following:

(1) The Texas Department of Human Services (DHS) reimburses the provider agency for services, but the CLASS documentation of services delivered form, or approved facsimile, is missing for the period for which services are reimbursed. DHS applies the error to the total number of units/dollars reimbursed for the pay period.

(2) The attendant, nurse, therapist, or other professional leaves the entire record of time section blank. DHS applies the error to the total number of units reimbursed for the pay period.

(3) DHS reimburses the provider agency for hours that exceed the authorization given by DHS.

(A) For habilitation services, the maximum that may be reimbursed for a month is the monthly amount authorized on the CLASS Individual Service Plan/Individual Program Plan (ISP/IPP) plus any hours not used due to participant stay while in a hospital or in a rehabilitation hospital.

(B) For nursing services, the maximum that may be reimbursed is the number of hours listed in the ISP form, item 16.

(C) DHS applies the error to the total number of units reimbursed in excess of the units authorized by DHS, unless purchased following emergency procedures.

(4) DHS reimburses the provider agency for any waiver service that is not identified on the participant's ISP form, unless purchased following emergency procedures. DHS applies the error to the entire amount reimbursed for such services.

(5) DHS reimburses the provider agency for hours that exceed the total number of hours recorded on the documentation of services delivered form or approved facsimile. DHS applies the error to the total number of units reimbursed in excess of the units recorded on the timesheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.

(6) The provider makes a claim for nursing, physical therapy, occupational therapy, or speech pathology services, but a valid physician's order is missing. DHS applies the error to the total number of units claimed and not covered by a valid order.

(7) DHS reimburses the provider agency for a claim for service, other than the initial administrative fee, delivered prior to the eligibility effective date on the ISP form. DHS applies the error to the total number of units reimbursed for such services.

(8) DHS reimburses the provider agency for any hours that consisted of non-billable time and activities as identified in §45.333 of this title (relating to Non-Billable Time and Activities). DHS applies the error to the total number of units reimbursed for such services.

(9) DHS reimburses the provider agency for more than fours hours of nursing used to decide whether to delegate to the direct services agency attendant. DHS applies the error to the total number of units reimbursed for such services.

(10) DHS reimburses the provider agency for more than 10 days during the participant's ISP year for nursing services being performed by a nurse to prevent service breaks caused by the attendant not being available to provide delegated nursing tasks. DHS applies the error to the total number of units reimbursed in excess of the 10 day maximum for such services.

(11) DHS reimburses the provider agency for an amount in excess of the amount documented on the receipt for adaptive aids/

vehicle modifications or minor home modifications. DHS applies the error to the total number of dollars reimbursed in excess of the amount on the receipt, plus the appropriate dollar amount of the requisition fee, if applicable.

(12) There is no documentation for the completion of purchase and there is no receipt for the purchase of adaptive aids/vehicle modifications or for the completion of minor home modifications for which the provider has been reimbursed. DHS applies the error to the total number of dollars reimbursed for adaptive aids/vehicle modifications or minor home modifications in question, including the requisition fee.

(13) DHS reimburses the provider agency for any waiver service that is not authorized on the participant's ISP form, unless the service was provided as a result of an emergency and is supported by backup documentation supplied within seven days from the date the emergency was determined.

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 January 26, 1998.

TRD-9801127
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Chapter 48. Community Care for Aged and Disabled

1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternative to Nursing Facility Care

40 TAC §§48.6003, 48.6041, 48.6042, 48.6044, 48.6046, 48.6048, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6064, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6086, 48.6088, 48.6090

The Texas Department of Human Services (DHS) proposes an amendment to §48.6003, concerning client eligibility criteria; and new §48.6041, concerning termination of services to current participants; §48.6042, concerning automatic suspension of Community Based Alternatives (CBA) services; §48.6044, concerning suspension of CBA services for cause; §48.6046, concerning sanctions related to service suspension; §48.6048, concerning notification of suspension; §48.6050, concerning service array for Home and Community Support Services; §48.6052, concerning cost-effective purchases of adaptive aids; §48.6054, concerning time frames for adaptive aids costing less than $500; §48.6056, concerning time frames for adaptive aids costing $500 or more; §48.6058, concerning cost-effective purchases of medical supplies; §48.6060, concerning time frames for medical supplies; §48.6062, concerning time frames for emergency purchases of medical supplies; §48.6064, concerning medical supplies on hand; §48.6066, concerning freight charges for medical supplies and adaptive aids; §48.6068, concerning cost-effective purchases of minor home modifications; §48.6070, concerning time frames for minor home modifications costing $1000 or more; §48.6072, concerning time frames for minor home modifications costing less than $1000; §48.6074, concerning landlord approval for minor home modifications; §48.6076, concerning accountability for minor home modifications; §48.6078, concerning billable units; §48.6080, concerning non- billable time and activities; §48.6082, concerning mutually exclusive services; §48.6084, concerning service claim limits; §48.6086, concerning claims and service delivery records; §48.6088, concerning monetary exceptions; and §48.6090, concerning fiscal monitoring; in its Community Care for Aged and Disabled chapter. The purpose of the amendment and new sections is to clarify when services to a participant must be suspended and when services must be terminated. The process for suspension or termination of services is defined. Also defined are the documentation requirements for provider payment, specifying what constitutes administrative and financial errors and establishing provider sanctions for errors identified. A sanction of 100% of the paid unit rate is applied to financial errors identified on the documentation reviewed, eliminating payment for services not authorized or not delivered according to program rules. A sanction of 12% of the unit rate is applied to the paid units with administrative errors on the documentation reviewed reducing payment for administrative services not performed. Administrative and financial errors are not extended beyond the documentation reviewed. Compliance with these rules improves fiscal accountability.

Eric M. Bost, commissioner, has determined that for the first five- year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to initiate a sanction of 12% for administrative errors, which is the percentage of the reimbursement paid by the department that is attributed to administration by the provider, and initiate a sanction of 100% for financial errors, eliminating payment for services that are not authorized and reducing the cost of services that are not delivered according to program rules and policies as established in current rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Gerardo Cantu at (512) 438-3693 in DHS's Community Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-010, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* .

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.6003. Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

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

[~~(3) meet the requirements for Preadmission Screening and Annual Resident Review (PASARR) and be determined appropriate for nursing facility care;~~]

(3) [~~(4)~~] choose home and community-based waiver services as an alternative to nursing facility placement based on an informed choice with approval conditional on feasible alternatives available under the waiver in accordance with 42 Code of Federal Regulations, §441.302(d)(1);

(4) [~~(5)~~] have an individual plan of care for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) whose cost does not exceed 95% of the individual's actual Texas Index for Level of Effort payment rate;

(5) [~~(6)~~] meet the financial eligibility criteria for waiver services as specified in §48.6007 of this title (relating to Financial Eligibility Criteria); and

(6) [~~(7)~~] have ongoing needs for waiver services whose projected costs, as indicated on the Individual Plan of Care, do not exceed the maximum service ceilings set for those services as listed in this paragraph:

(A) Adaptive Aids and Medical Supplies service category cannot exceed $10,000 per individual per Individual Plan of Care year without approval by the waiver manager;

(B) minor home modifications service category cannot exceed $7500 per individual without approval by the waiver manager;

(C) respite care cannot exceed 30 days per individual per Individual Plan of Care year without approval by the waiver manager;

(7) [~~(8)~~] receive waiver services within 30 days after waiver eligibility is established and

(8) [~~(9)~~] reside either in his own home or in a licensed personal care facility or adult foster care home contracted with the Texas Department of Human Services to provide Community Based Alternatives (CBA) services. CBA services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed personal care facilities.

(9) [~~(10)~~] meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk as revised in April 1996 and summarized as follows:

(A) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;

(B) has a functional decline in the past 90 days;

(C) has a history of a fall two or more times in past 180 days;

(D) has a neurological diagnosis of Alzheimer's, head trauma, multiple sclerosis, Parkinsonism, or dementia;

(E) has a history of nursing facility placement within the last five years;

(F) has multiple episodes of urine incontinence daily; and

(G) goes out of one's residence one or fewer days a week.

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

§48.6041. Termination of Services to Current Participants.

(a) The case manager must terminate Community Based Alternatives (CBA) services if one or more of the following circumstances occur.

(1) The participant leaves the state for more than 90 days.

(2) The participant dies.

(3) The participant has resided in an institutional setting for longer than 120 days. An institution includes an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home or intermediate care facility for persons with mental retardation or related conditions (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances.

(4) The participant requests that services end and the request is documented in writing.

(5) The participant is not financially eligible for Medicaid benefits.

(6) The participant does not meet the medical necessity (MN) criteria for nursing facility care.

(7) The estimated cost of the CBA services necessary to adequately meet the needs of the participant exceeds his CBA cost ceiling.

(8) Two providers of the same category have refused to serve the participant on the basis of a reasonable expectation that the participant's medical, nursing, and social needs cannot be met adequately in the participant's residence.

(9) The participant\responsible party or court-appointed guardian refuses to sign the Individual Service Plan (ISP). A referral will be made to the County Judge to determine whether the court-appointed guardian is acting in the best interests of the CBA participant.

(10) The participant refuses to comply with his ISP, including situations in which he refuses services and threatens his own health and safety.

(11) The participant refuses to release relevant medical information necessary for the ISP.

(12) The participant or someone in the participant's home deliberately threatens the health or safety of the service provider or the Texas Department of Human Services (DHS) staff.

(13) The participant is incarcerated for more than 30 days.

(14) The participant or someone in the participant's home has subjected the person providing services to sexual harassment.

(15) The participant or someone in the participant's home has a substantiated pattern of discrimination against the service provider(s) on the basis of race, color, national origin, age, sex, disability, political beliefs, or religion that has not improved with appropriate intervention.

(16) The participant or someone in the participant's home has a substantiated use of illegal drugs or has illegal drugs readily available within sight of the service provider.

(17) The participant fails to pay his room and board expenses or co- payment in the adult foster care (AFC) or assisted living/residential care (AL/RC) setting.

(18) Participant fails to pay his qualified income trust co-payment.

(b) The case manager provides written notice to the participant of the effective date of termination and provides the participant with the written notice of the right to appeal.

(c) If the participant appeals the denial within 12 days of notification, the case manager continues CBA services until notification of the decision by the DHS hearing officer. The case manager may not reduce services until the outcome of the appeal is known. Services do not continue during the appeal process when the reason for denial is that the participant threatens the health and safety of himself or others.

§48.6042. Automatic Suspension of Community Based Alternatives (CBA) Services.

The Home and Community Support Services (HCSS) agency must automatically suspend CBA services to a participant when:

(1) the participant is admitted to an institution. An institution includes acute care hospital, state hospital, rehabilitation hospital, state school, or a nursing home;

(2) the participant temporarily leaves the contracted service area for vacations or other personal business unless special arrangements have been authorized by the HCSS agency;

(3) the participant dies;

(4) the participant requests in writing that services end and the request is documented in writing;

(5) the participant's physician refuses to sign orders or rescinds existing orders for the service;

(6) the Texas Department of Human Services (DHS) denies the participant's eligibility;

(7) the participant or someone in the participant's home deliberately threatens the health or safety of the service provider;

(8) DHS terminates the contract with the provider; or

(9) the participant is incarcerated.

§48.6044. Suspension of Community Based Alternatives Services for Cause.

The Home and Community Support Services (HCSS) agency may suspend services if one or more of the following occur:

(1) the participant or someone in the participant's home sexually harasses the service provider(s);

(2) the participant or someone in the participant's home has a pattern of discrimination against the service provider(s) on the basis of race, color, national origin, age, sex, disability, political beliefs, or religion that has not improved with appropriate intervention; or

(3) the participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

§48.6046. Sanctions Related to Service Suspension.

The Texas Department of Human Services (DHS) may sanction up to and including contract termination any provider agency that:

(1) suspends services to a participant for a reason other than what is allowed in §48.6042 of this title (relating to Automatic Suspension of Community Based Alternatives Services) and §48.6044 of this title (relating to Suspension of Community Based Alternatives for Cause); or

(2) uses the information cited in §48.6042 of this title (relating to Automatic Suspension of Community Based Alternatives Services) and §48.6044 of this title (relating to Suspension of Community Based Alternatives for Cause) to suspend a participant when the provider agency knew or should have known that the cited information did not apply to the participant.

§48.6048. Notification of Suspension.

No later than the first Texas Department of Human Services work day after services are suspended, the Home and Community Support Services (HCSS) agency must verbally notify the case manager or staff in the case manager's office about the reason the HCSS agency suspended services. Written notification on the case information form must be sent to the case manager within seven calendar days of service suspension.

§48.6050. Service Array for Home and Community Support Services (HCSS).

HCSS agencies must provide the array of home and community support services identified in paragraphs (1)-(9) of this section in accordance with the individual service plan through their own employees, subcontractors, or personal service agreements with qualified individuals. Services include:

(1) personal assistance services;

(2) nursing services;

(3) physical therapy;

(4) occupational therapy;

(5) speech pathology services;

(6) adaptive aids;

(7) medical supplies;

(8) minor home modifications; and

(9) respite care (in-home).

§48.6052. Cost-Effective Purchases of Adaptive Aids.

(a) For any single adaptive aid expenditure costing less than $500, the Home and Community Support Services (HCSS) agency must:

(1) determine and document the needs and preferences of the participant for the adaptive aid;

(2) document the necessity for the adaptive aid;

(3) consider renting the adaptive aid on a short-term basis if the participant's needs or desires cannot be accurately determined at the time of the assessment;

(4) obtain comparative price quotes or use a price list to document prices of the adaptive aid from a minimum of three suppliers or annually select a supplier based on the lowest prices from the quotes/price list for the main types of adaptive aids that the agency has been purchasing;

(5) document the justification of the selection including cost, delivery time of item, record of quality services, access to

loaners during repairs, repair history, and warranties. For those suppliers selected, document in the vendor records the names of the suppliers from whom all quotes/price lists were obtained, the amount of the quotes/price lists, the items for which the quotes/price lists were requested, and the dates the quotes/price lists were obtained; and

(6) have a nurse, therapist, or other appropriate professional conduct a home visit within 14 Texas Department of Human Services work days of delivery to verify that the adaptive aid meets the needs of the participant, that orientation was provided to the participant in the use of the adaptive aid, and to document completion of purchase and satisfaction of the participant on the documentation of completion of purchase form.

(b) For any single adaptive aid expenditure costing $500 or more, in addition to complying with the requirements listed in subsection (a)(1)-(6) of this section, the HCSS agency must:

(1) obtain written specifications for the adaptive aid from a licensed occupational therapist, physical therapist, speech pathologist, or other appropriate professional specializing in assessments for assistive technology or adaptive aids;

(2) obtain a minimum of three written bids if not using price lists or price quotes as identified under subsection (a)(5)-(6) of this section, and document the justification of the selection including cost, delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties; and

(3) document the justification when not accepting the lowest bid, including delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties.

§48.6054. Time Frames for Adaptive Aids Costing Less Than $500.

(a) The Home and Community Support Services agency must purchase and ensure delivery of any adaptive aid within 14 Texas Department of Human Services (DHS) work days of being authorized to purchase the adaptive aid, counting from either the effective date of the individual service plan form or the date the form is received, whichever is later.

(b) If the agency cannot ensure delivery of an adaptive aid within 14 DHS work days of receipt of DHS's authorization, before the 14th day, the agency must submit to the case manager the case information form, containing an explanation why the adaptive aid cannot be delivered within the required time frame and a new proposed date for the delivery.

§48.6056. Time Frames for Adaptive Aids Costing $500 or More.

(a) The Home and Community Support Services agency must purchase and ensure delivery of any adaptive aid within 30 Texas Department of Human Services (DHS) work days of being authorized to purchase the adaptive aid, counting from either the effective date of the individual service plan form or the date the form is received, whichever is later.

(b) If the agency cannot ensure delivery of an adaptive aid within 30 DHS work days of receipt of DHS's authorization, before the 30th day, the agency must submit to the case manager the case information form, containing an explanation why the adaptive aid cannot be delivered within the required time frame and including a new proposed date for the delivery.

§48.6058. Cost-Effective Purchases of Medical Supplies.

The Home and Community Support Services agency must:

(1) prior to the selection of medical supplies, obtain comparative price quotes or use a price list to document prices of the medical supplies from a minimum of three suppliers; or

(2) at least annually select supplies based on the lowest prices from the quotes/price list for the main types of supplies that the agency has been purchasing, and document the justification of the selection, including cost, delivery time of item, and record of quality services; and

(3) document the basis for selection and for those selected, document in the vendor records the names of the suppliers from whom all quotes/price lists were obtained, the amount of the quotes/price lists, the items for which the quotes/price lists were requested, and the dates the quotes/price lists were obtained.

§48.6060. Time Frames for Medical Supplies.

(a) The Home and Community Support Services (HCSS) agency is responsible for assuring the purchase and delivery of any authorized medical supply within five Texas Department of Human Services (DHS) work days of the waiver service initiation date.

(b) On existing cases, the HCSS agency must deliver medical supplies within five DHS work days of being authorized to purchase the supplies, counting from the effective date of the individual service plan form or the date the form is received, whichever is later.

(c) If the HCSS agency cannot ensure delivery of a medical supply due to unusual or special supply needs or availability within five DHS work days of receipt of DHS's authorization, the HCSS agency must submit the case information form to the case manager before the fifth day, containing an explanation why the medical supply cannot be delivered within the required time frame and a new proposed date for the delivery.

§48.6062. Time Frames for Emergency Purchases of Medical Supplies.

If the case manager or the Home and Community Support Services (HCSS) agency identifies a need for the emergency purchase and delivery of a medical supply, the HCSS agency must deliver the item within two Texas Department of Human Services work days of identifying the need for the medical supply.

§48.6064. Medical Supplies on Hand.

At least twice a year, the Home and Community Support Services agency must verify the quantity of the medical supplies that the participant has on hand, and, if necessary, adjust the service plan or modify the delivery schedule for the medical supplies. The results of this verification must be documented in the case conference notes.

§48.6066. Freight Charges for Medical Supplies and Adaptive Aids.

The Home and Community Support Services agency must assure that, if medical supplies or adaptive aids are delivered to the participant by means of any commercial carrier, such as United Parcel Services or United States Postal Service, the most cost effective carrier is used. Overnight delivery should not be used unless it is an emergency purchase that cannot be purchased locally and delivered by the next day after determining the need.

§48.6068. Cost-Effective Purchases of Minor Home Modifications.

The Home and Community Support Services (HCSS) agency must:

(1) determine and document the needs and preferences of the participant for the minor home modification;

(2) document the necessity for the minor home modification;

(3) obtain written specifications for any project expenditure costing $1000 or more which will be used to procure bids and inspect the completed job;

(4) obtain a minimum of three written bids based on the written specifications for any project expenditure costing $1000 or more;

(5) select a bidder to provide the modification and document the justification when not selecting lowest bid for the selection, including cost, completion time of modification, record of quality service, timely response to repair requests, and warranties; and

(6) inspect the minor home modification for completion, compliance with the written specifications, if applicable, and quality of workmanship within seven Texas Department of Human Services (DHS) work days of the work being completed. The inspection requirements are as follows:

(A) The HCSS provider must ensure that a qualified person inspects completed work to ensure all work was done according to written specifications, if applicable, and the Texas Accessibility Standards.

(B) The inspector cannot be the attendant.

(C) Once the inspection is concluded and the modification is completed, the HCSS provider must send a copy of the Community Based Alternatives documentation of completion of purchase form to the case manager within seven DHS work days after the completion of the modification.

§48.6070. Time Frames for Minor Home Modifications Costing $1000 or More.

(a) The Home and Community Support Services agency is responsible for assuring the completion of all minor home modifications within 60 Texas Department of Human Services (DHS) work days of being authorized to do the minor home modification, counting from either the effective date of the individual service plan form or the date the form is received, whichever is later.

(b) If the modification cannot be completed within 60 DHS work days of being authorized to do the minor home modification, the agency must submit the case information form to the case manager prior to the 60th day, explaining why the modification cannot be completed on time and including a new projected date of completion for the modification.

§48.6072. Time Frames for Minor Home Modifications Costing Less Than $1000.

(a) The Home and Community Support Services agency is responsible for assuring the completion of all minor home modifications within 30 Texas Department of Human Services (DHS) work days of being authorized to do the minor home modification, counting from either the effective date of the individual service plan form or the date the form is received, whichever is later.

(b) If the modification cannot be completed within 30 DHS work days of being authorized to do the minor home modification, the agency must mail the case information form to the case manager prior to the 30th date, explaining why the modification cannot be completed on time and including a new projected date of completion for the modification.

§48.6074. Landlord Approval for Minor Home Modifications.

Prior to beginning the home modifications, the Home and Community Support Services (HCSS) agency must obtain written approval from the owner of the building for the proposed modifications if the rental agreement does not provide such approval. Additionally, the HCSS agency must obtain any applicable building permits prior to starting the home modifications.

§48.6076. Accountability for Minor Home Modifications.

If a minor home modifications require repair or replacement within one year of completion, the Home and Community Support Services agency must repair or replace the minor home modification without billing the Texas Department of Human Services or the participant, except when

(1) the finished modification met appropriate specifications and bid requirements agreed upon before the job was started; or

(2) the repair or replacement is required due to circumstances beyond the control of the participant or participant's family members, or due to abuse caused by the participant or family members.

§48.6078. Billable Units.

The following activities may be billed as Community Based Alternatives (CBA) services by Home and Community Support Services agencies:

(1) Nursing services:

(A) direct participant contact;

(B) participation on the interdisciplinary team (IDT);

(C) time spent in delegating, training, and supervising personal care attendants, Adult Foster Care providers, and provider substitutes in the delivery of nursing tasks that have been delegated;

(D) time spent in providing nursing tasks that had been delegated to an attendant in order to prevent a service break, if no attendant can be found;

(E) time spent in training family members, neighbors, and other informal support providers to provide needed nursing or personal care tasks; and

(F) time spent in performing the annual reassessment or Texas Index for Level of Effort resets which includes actual participant contact and documentation of assessment forms and care plan.

(2) Specialized therapy services (occupational therapy, physical therapy, and speech pathology):

(A) direct participant contact; and

(B) participation on the IDT.

(3) Personal assistance services:

(A) direct participant contact to provide personal care and nursing tasks that have been delegated; and

(B) participation on the IDT.

(4) Billable items for medical supplies include the invoice cost, including freight charges and sales tax, of the medical supply and the requisition fee.

(5) Billable items for minor home modifications include the invoice cost of labor, materials, sales tax, and the requisition fee.

(6) Billable items for adaptive aids include the invoice cost of the item, including freight charges and sales tax, and the requisition fee.

(7) In-Home Respite Care - relief of the unpaid primary caregiver.

§48.6080. Non-Billable Time and Activities.

The following activities are not considered billable activities under the Community Based Alternatives (CBA) program for Home and Community Support Services agencies:

(1) supervision of personal care attendants performing personal assistance tasks, unless the attendant is delivering nursing tasks delegated by a registered nurse;

(2) phone calls, letters, or meetings with Texas Department of Human Services (DHS) or community resources;

(3) administrative meetings or staff meetings;

(4) in-service training, continuing education, or conferences;

(5) employee conferences or evaluations;

(6) filing claims for services;

(7) traveling to and from the participant's home;

(8) processing paperwork or completing records or reports, except for the annual reassessment;

(9) home modifications, medical supplies, or adaptive aids that are not listed in the CBA Provider Manual as covered items nor approved by authorized DHS staff;

(10) collateral contact when that contact is between agency employees and individuals providing services to participants under personal service agreements or subcontracts with the CBA agency;

(11) billing for services that are considered to be mutually exclusive, as identified in §48.6082 of this title (relating to Mutually Exclusive Services);

§48.6082. Mutually Exclusive Services.

The following waiver services are considered to be mutually exclusive and are not allowed under the waiver:

(1) A participant receiving In-Home Respite Care may not receive personal assistance services for the same period of time.

(2) A participant residing in a personal care facility, Type B, may not receive minor home modifications.

(3) A participant residing in a personal care facility or an Adult Foster Care home may not receive personal assistance services.

(4) A participant cannot receive any Home and Community Support Services reimbursed through the Community Based Alternatives program from two provider agencies on the same date.

§48.6084. Service Claim Limits.

(a) A maximum of four hours may be billed under nursing services by the registered nurse to decide whether or not to delegate a nursing task to an adult foster care provider.

(b) In order to avoid service breaks, the Home and Community Support Services agency may bill for authorized personal assistance services hours performed by a licensed nurse, for a maximum period of 10 days during the participant's individual service plan effective period.

(1) The hours performed by the nurse may be billed at the nursing rate, only if there are no attendants available to perform the needed delegated nursing tasks and only licensed nurses can be recruited.

(2) The documentation must include all efforts the provider agency made in order to find an attendant to deliver delegated nursing tasks in order to prevent a break in service.

(c) Components of minor home modifications cannot be billed without an invoice or in more than three billings.

§48.6086. Claims and Service Delivery Records.

The Community Based Alternatives (CBA) Home and Community Support Services (HCSS) agency provider is liable for monetary exceptions if the monthly claims do not correspond with the provider's service authorization and service delivery records. The provider must maintain the following records:

(1) notification of Community Based Alternatives services form;

(2) individual service plan, pages 1-3 and attachments B-E form;

(3) notification of ineligibility form;

(4) client needs assessment questionnaire and task/hour guide and addendum for personal assistance services form;

(5) CBA HCSS purchased services delivery report form;

(6) CBA documentation of services delivered form, or a facsimile previously approved by the waiver manager;

(7) bids for minor home modifications costing $1000 or more;

(8) bids for any single expenditure for adaptive aids costing $500 or more, comparative price quotes or a price list;

(9) annual comparative price quotes/lists for the purchase of medical supplies;

(10) annual comparative price quotes/lists for the purchase of adaptive aids;

(11) receipts from the contractor for minor home modifications completed, documenting the date of completion and the cost of the modification;

(12) CBA documentation of completion of purchase form;

(13) any applicable building permits;

(14) CBA specifications for minor home modifications form;

(15) documented justification for not accepting the lowest bids or quotes for adaptive aids, medical supplies, or minor home modifications, where applicable;

(16) if using price lists/price quotes, documentation of the basis of the annual selection of a supplier; and

(17) written approval from the homeowner for modifications to be made.

§48.6088. Monetary Exceptions.

(a) Providers of Home and Community Support Services (HCSS) services must document on the documentation of service delivery form, or an approved facsimile, that services reimbursed on an hourly basis are provided as authorized on the notification of Community Based Alternatives services form and identified on the individual service plan, including:

(1) type of service delivered;

(2) units of service delivered;

(3) dates of service delivery; and

(4) name of the individual providing waiver services.

(b) If documentation does not support the monthly claims, the HCSS agency may be liable for monetary exceptions.

(c) The HCSS agency must designate a timekeeper to verify that the hours recorded on the time sheet were worked and that the tasks assigned were completed. The timekeeper may be a registered nurse supervisor.

(d) The employee must enter the daily total time and monthly total hours. An employee who is unable to complete and sign the time sheet may designate another person to complete and sign the time sheet. The HCSS agency must document in writing the reasons the employee is unable to complete and sign the time sheet and must document in writing who is authorized to make these entries. The documentation may be a written statement that includes the following:

(1) the employee's name;

(2) a brief summary of what portion of the time sheet the employee is unable to complete;

(3) the name and relationship of the person who has been designated to complete the form for the employee; and

(4) the timekeeper's signature and date. The timekeeper may add the monthly total of time with no exception taken, as long as the employee completes the daily total time.

§48.6090. Fiscal Monitoring.

(a) Administrative errors. A recoupment of 12% of the paid unit rate is the administrative error exception for services billed on an hourly basis. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to, the items in paragraphs (1)-(2) of this subsection:

(1) administrative errors on the documentation of services delivered form or the prior approved facsimile:

(A) The provider agency leaves the month and year of service blank in item 2, section A. The Texas Department of Human Services (DHS) applies the error to the total number of units documented on the time sheet.

(B) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant, nurse, or therapist worked. DHS applies the error to the total number of units documented on the time sheet.

(C) The timekeeper corrects the date of signature, but fails to initial the correction. DHS applies the error to the number of units reimbursed after the earliest signature date.

(D) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. DHS applies the error to the total number of units documented on the time sheet.

(E) The timekeeper enters a date of signature that is before the date of the last day services are delivered. DHS applies the error to the total number of units reimbursed after the signature date.

(F) The timekeeper fails to sign the time sheet. DHS applies the error to the total number of units documented on the time sheet.

(G) The timekeeper uses a signature stamp, but fails to initial the stamped signature. DHS applies the error to the total number of units documented on the time sheet.

(H) The attendant, nurse, therapist, and/or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the time sheet. DHS applies the error to the total number of units documented on the time sheet. If the liquid paper/correction fluid is used only on a daily entry in the record of time, DHS applies the error only to the total number of units reimbursed for that day.

(I) The attendant, nurse, therapist, and/or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. DHS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(J) The attendant fails to initial an increase in the daily time or the monthly total of hours for the pay period. DHS applies the error to the number of units reimbursed in excess of the original entry.

(K) The attendant, nurse, therapist, or other agency representative fails to sign the documentation of services delivered form or approved facsimile. DHS applies the error to the total number of units documented on the time sheet.

(L) The provider agency uses a form that has not been approved by DHS. DHS applies the error to the total number of units reimbursed while using something other than documentation of services delivered form or an approved facsimile.

(M) DHS reimburses the provider agency for nursing, therapies, personal assistance services, or in-home respite, but a valid individual service plan, pages 1-3 and all pertinent attachments, and client needs assessment questionnaire and task/hour guide and addendum for personal assistance services form, signed by the case manager, is missing for the period reimbursed by the agency. DHS applies the error to the total number of units of nursing, therapies, personal assistance services, or in-home respite, claimed and not covered by a valid individual service plan.

(N) DHS reimburses the provider agency for nursing services, but the documentation of services form lists "supervisory visit" in the comments section without specifying that it is a nursing visit to supervise the delivery of delegated tasks, and there is no other documentation available that the nurse provided nursing services during the visit.

(2) The following items are administrative errors resulting in recoupment of the entire requisition fee. The recoupment amount represents the administrative cost of the requisition fee:

(A) There is no Community Based Alternatives documentation of completion of purchase form, but there is a receipt for the purchase of adaptive aids, medical supplies, or for the completion of the minor home modification.

(B) Bids were required for the purchase of an adaptive aid or the completion of a minor home modification and bids were not obtained.

(C) DHS reimburses the provider for the purchase of medical supplies, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the provider has been reimbursed or the price list/price quotes were obtained more than 12 months before the purchase.

(D) DHS reimburses the provider for the purchase of adaptive aids, but there is no documentation available that price list/

price quotes were obtained from three suppliers for the items for which the provider has been reimbursed or there is no documentation available that the supplier selected on an annual basis to deliver the adaptive aids had the lowest prices for the main type of adaptive aids the agency has purchased.

(b) Financial errors. A reduction of 100% of the paid unit rate is the financial error exception. This exception is applied to the units of service on the documentation reviewed. This exception is not extrapolated. Financial errors include, but are not limited to, the following:

(1) DHS reimburses the provider agency for services, but the documentation of services delivered form, or approved facsimile, is missing for the period for which services are reimbursed. DHS applies the error to the total number of units documented on the time sheet.

(2) The attendant, nurse, or therapist leaves the entire record of time section blank. DHS applies the error to the total number of units documented on the time sheet.

(3) DHS reimburses the provider agency for hours that exceed the authorization given by DHS. DHS applies the error to the total number of units reimbursed in excess of the units authorized by DHS, unless purchased following emergency procedures.

(A) For personal assistance services, the maximum that may be reimbursed for a month is the weekly total of hours listed under "adjusted weekly hours" on the addendum to the personal assistance services form, multiplied by 4.50 plus prior authorized hours not used due to participant stay while in a hospital or in a rehabilitation hospital.

(B) For nursing services, the maximum that may be reimbursed is the number of hours listed under "direct nursing hours" on the individual service plan/nursing service plan.

(4) DHS reimburses the provider agency for any waiver service that is not identified on the participant's individual service plan, attachments B-E, and client needs assessment questionnaire and task/hour guide and addendum for personal assistance services form, unless the service was provided as a result of an emergency and is supported by backup documentation supplied within seven DHS work days from the date the emergency was determined. DHS applies the error to the entire amount reimbursed for such services.

(5) DHS reimburses the provider agency for hours that exceed the total number of hours recorded on the documentation of services delivered form or approved facsimile. DHS applies the error to the total number of units reimbursed in excess of the units recorded on the time sheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.

(6) The provider makes a claim for nursing, physical therapy, occupational therapy, or speech pathology services, but a valid physician's order is missing. DHS applies the error to the total number of units claimed and not covered by a valid order.

(7) DHS reimburses the provider agency for a claim for service, other than a pre-enrollment home health assessment, delivered prior to the eligibility effective date on the notification of Community Based Alternatives services form. DHS applies the error to the total number of units reimbursed for such services that were delivered before the effective date on the form.

(8) DHS reimburses the provider agency for any hours that consisted of non-billable time and activities as identified in the rule §48.6080 of this title (relating to Non-Billable Time and Activities). DHS applies the error to the total number of units reimbursed for such services.

(9) DHS reimburses the provider agency for more than four hours of nursing used to decide whether to delegate to an Adult Foster Care provider. DHS applies the error to the total number of units reimbursed for such services.

(10) DHS reimburses the provider agency for more than 10 days during the participant's individual service plan year for nursing services being performed by a nurse to prevent service breaks caused by the attendant not being available to provide delegated nursing tasks. DHS applies the error to the total number of units reimbursed in excess of the ten-day maximum for such services.

(11) DHS reimburses the provider agency for an amount in excess of the amount documented on the receipt for adaptive aids, medical supplies, or minor home modifications. DHS applies the error to the total number of dollars reimbursed in excess of the amount on the receipt, plus the appropriate dollar amount of the requisition fee, if applicable.

(12) There is no receipt for the purchase of adaptive aids or medical supplies, or for the completion of minor home modifications for which the provider has been reimbursed. DHS applies the error to the total dollar amount reimbursed for the medical supplies, adaptive aids, or minor home modifications in question, including the requisition fee.

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 January 26, 1998.

TRD-9801120
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Chapter 79. Legal Services

The Texas Department of Human Services (DHS) proposes the repeal of §§79.1001-79.1007 and §§79.1601-79.1614, concerning informal hearings, request for hearing, setting for hearing, conduct of hearing, decision, rehearing, administrative appeal, definitions, right to a hearing, special requirements, notice of adverse action, request for a hearing, effective dates of adverse actions, administrative law judge, hearing guidelines, withdrawal of hearing request and informal disposition, conduct of hearings - general requirements, prehearing procedure, evidence and depositions, deliberation, and decisions; and proposes new §§79.1601-79.1613, concerning definitions, computation of time, notice of adverse action, request for a hearing, notice of hearing, venue, representation of parties, prehearing procedure, discovery and depositions, informal disposition of appeal, conduct of hearings, final decisions and orders, and motions for rehearing, in its Legal Services chapter. DHS is also repealing Subchapter K, Informal Hearings. The purpose of the repeals and new sections is to organize and simplify the formal hearing rules that are used when appearing before and participating in a hearing before an administrative law judge.

In addition, the new sections promulgate hearing rules are required by 1997 legislation, including Senate Bills 30, 84, and 637.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $58,630 for fiscal year 1998; $117,812 for fiscal year 1999; $117,812 for fiscal year 2000; $117,812 for fiscal year 2001; and $117,812 for fiscal year 2002. There will also be an increase in revenue of $99,975 for fiscal year 1998; $399,900 for fiscal year 1999; $399,900 for fiscal year 2000; $399,900 for fiscal year 2001; and $399,900 for fiscal year 2002. There will be no fiscal implications for local government.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that a party to a hearing will be able to consult one set of hearing rules to determine how to proceed before an administrative judge in contested cases involving adverse actions by DHS. Also, Senate Bill 30 implementation costs will be offset by increased recoveries of benefit overissuances. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Carrie McLarty at (512) 438-4872 in DHS's Hearings Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-117, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter K. Informal Hearings

40 TAC §§79.1001–79.1007

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§79.1001. Informal Hearings.

§79.1002. Request for Hearing.

§79.1003. Setting for Hearing.

§79.1004. Conduct of Hearing.

§79.1005. Decision.

§79.1006. Rehearing.

§79.1007. Administrative 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 January 23, 1998.

TRD-9801066

Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Subchapter Q. Formal Hearings

40 TAC §§79.1601–79.1614

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§79.1601. Definitions.

§79.1602. Right to a Hearing.

§79.1603. Special Requirements.

§79.1604. Notice of Adverse Action.

§79.1605. Request for a Hearing.

§79.1606. Effective Dates of Adverse Actions.

§79.1607. Administrative Law Judge.

§79.1608. Hearing Guidelines.

§79.1609. Withdrawal of Hearing Request and Informal Disposition.

§79.1610. Conduct of Hearings - General Requirements.

§79.1611. Prehearing Procedure.

§79.1612. Evidence and Depositions.

§79.1613. Deliberation.

§79.1614. Decisions.

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

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TRD-9801067
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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40 TAC §§79.1601–79.1613

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001- 22.030.

§79.1601. Definitions.

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

(1) Administrative law judge - The Texas Department of Human Services' (DHS) attorney appointed to preside over the hearing by the director of the Hearings Department.

(2) Administrator - A nursing facility administrator licensed by DHS.

(3) Adverse action - Any action in which DHS:

(A) terminates or suspends a contract between a person and DHS before the contract's stated expiration date;

(B) denies payment, in whole or part, for any claim arising under a contract;

(C) terminates or suspends payments, in whole or part, to a contractor;

(D) demands payment or repayment for contract or rule violations;

(E) directs one of its contractors to terminate or suspend a subcontract or payments to any subcontractor or provider of medical services;

(F) chooses not to renew a nursing facility contract;

(G) reduces a contractor's block grant funds by 25% or more of the amount DHS reimburses if DHS plans to allocate the withheld funds to another contractor for similar services in the same geographic area, if the contractor alleges that the reduction was in violation of DHS rules, was discriminatory, or was without reasonable basis in law or fact; it does not apply to funding or contracts subject to DHS's competitive procurement rules;

(H) denies, suspends, or revokes the license of a person:

(i) providing home health services;

(ii) operating an adult day-care facility or an adult day health care facility;

(iii) operating a personal care facility;

(iv) operating a convalescent or nursing facility;

(v) operating a maternity home;

(vi) operating an intermediate care facility for the mentally retarded; or

(vii) operating a nurse aide training and competency evaluation program;

(I) terminates the certification of a facility providing intermediate or long-term care for the mentally retarded;

(J) imposes civil, administrative, or monetary penalties against a convalescent or nursing facility;

(K) imposes administrative penalties against a person, as defined in paragraph (15)(B) of this section;

(L) revokes, suspends, or refuses to renew an administrator's license; assesses an administrative penalty against an administrator; issues a written reprimand to an administrator; requires an administrator to participate in continuing education; or places an administrator on probation;

(M) suspends a license or revokes a stay of an order suspending a license issued to any person by the Texas Department of Public Safety or the Texas Parks and Wildlife Department;

(N) places a finding of abuse, neglect, or misappropriation of a resident's property by a nurse aide on the nurse aide registry;

(O) denies, revokes, suspends, refuses to renew, or rescinds program approval of a medication aide permit;

(P) excludes a person, as that term is defined in paragraph (15)(B) of this section, from eligibility for a license to operate an institution; or

(Q) imposes any adverse sanction, penalty, or other action to which a person has a statutory right to a formal hearing in accordance with the provisions of this subchapter.

(4) Commissioner - The commissioner of the Texas Department of Human Services.

(5) Contract - Any written document or series of documents that obligates DHS to provide consideration to a person in exchange for goods or services from that person or that obligates DHS to provide goods or services in exchange for consideration.

(6) Contractor - Any person with whom DHS has a written contract.

(7) Controlling person - A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person, including:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(B) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, unless the individual does not exercise any formal or actual influence or control over the operation of an institution.

(8) Department - The Texas Department of Human Services.

(9) Hearings Department - The Hearings Department of the Texas Department of Human Services.

(10) Institution - An establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment, and provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) License - When used in conjunction with a hearing to suspend a license to operate a motor vehicle or a license to engage in recreational activity, this term shall mean a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) a person must obtain to:

(i) operate a motor vehicle; or

(ii) engage in a recreational activity, including hunting and fishing, for which a license or permit is required.

(12) Licensee - When used in conjunction with a hearing to suspend a license to operate a motor vehicle or a license to engage in recreational activity, this term shall mean the person whose license DHS seeks to suspend.

(13) Licensing authority - When used in conjunction with a hearing to suspend a license to operate a motor vehicle or a license to engage in recreational activity, this term shall mean the Texas Department of Public Safety or the Texas Parks and Wildlife Department.

(14) Order suspending a license - When used in conjunction with a hearing to suspend a license to operate a motor vehicle or a license to engage in recreational activity, this term shall mean an order issued by DHS directing a licensing authority to suspend a license.

(15) Person - The following terms apply to the definition of a person:

(A) Except as defined in subparagraph (B) of this paragraph, a person is an individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.

(B) When used in conjunction with a hearing to deny, suspend, or revoke a license as provided by §242.061 of the Texas Health and Safety Code, an administrative penalty hearing as provided by §242.066 of the Texas Health and Safety Code, or an exclusion hearing as provided by §242.0615 of the Texas Health and Safety Code, a person is the applicant; the partner, officer, director, or managing employee of the applicant; the licensee; the partner, officer, director, or managing employee of the licensee; the owner or the one who controls the owner of the physical plant of a facility in which an institution operates or is to operate; or a controlling person.

(16) Petitioner - The designation used by a person against whom an adverse action has been proposed or taken and who participates in a hearing conducted pursuant to this subchapter.

(17) Respondent - The designation used by DHS when DHS is a party to a hearing conducted pursuant to this subchapter.

§79.1602. Computation of Time.

In computing any period of time prescribed under this subchapter or by order of the administrative law judge, the period begins on the day after the act or event in question and concludes on the last day of the period; however, if the last day is a Saturday, Sunday, or legal holiday, the last day runs until the next day that is not a Saturday, Sunday, or legal holiday.

§79.1603. Notice of Adverse Action.

(a) Commissioner to send notice. The commissioner or the commissioner's designee shall send each person against whom the Texas Department of Human Services (DHS) takes adverse action notice of the adverse action.

(b) Services. The notice shall be sent by certified mail, return receipt requested, unless DHS determines that a more immediate form of notice is required.

(c) Contents of notice. The notice shall include details of the basis of the adverse action sufficient to enable the person to file a timely appeal of and request a hearing on the imposition of the adverse action by DHS. The notice shall inform the person that the person has the right to a hearing to contest the adverse action by sending a written request for a hearing to the Hearings Department and shall specify the date by which such written request must be received by the Hearings Department.

(d) Notice not required. DHS is not required to give a person notice of adverse action with each billing transaction for areas of DHS that have a large volume of bills or which routinely post debit and credit entries. DHS must give the contractor an individual notice of appeal rights any time the contractor informs DHS that the contractor is dissatisfied with a claim transaction that is an adverse action.

(e) Special requirements for contractors. A notice of adverse action involving a contract cancellation must specify whether the contract will remain in force pending completion of the appeal.

(f) Special requirements for nurse aides. A notice of adverse action to a nurse aide accused of resident abuse, resident neglect, or misappropriation of a resident's property must include:

(1) the nature of the allegations;

(2) the date and time of the alleged occurrence;

(3) notification of the right to a hearing;

(4) notification of DHS's intent to report the findings to the nurse aide registry following a hearing;

(5) the fact that the nurse aide's failure to request a hearing within 30 days from the date of the notice will result in reporting the findings to the nurse aide registry;

(6) the consequences of waiving the right to a hearing;

(7) the consequences of a finding through the hearing process that the alleged conduct occurred; and

(8) the fact that the nurse aide has the right to be represented by an attorney of the nurse aide's choice at the nurse aide's expense.

(g) Special requirements for administrative penalties assessed against nursing facility administrators.

(1) Notice given by DHS. When DHS determines that an administrative penalty should be assessed against a nursing facility administrator, DHS shall give written notice of such determination to the administrator.

(2) Contents of notice. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty. The notice must inform the administrator of the date by which the administrator should submit its written request for a hearing to the Hearings Department and must inform the administrator that the administrator has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Special requirements for motor vehicle or recreational licenses.

(1) Initiation of adverse action. DHS may initiate a proceeding to suspend a license by filing a petition with the Hearings Department.

(2) Contents of petition. DHS's petition must state that license suspension is authorized under §23.003 of the Texas Human Resources Code and must allege the licensee's name; the licensee's social security number, if known; the type of license held by the licensee; the licensing authority involved; and the amount that DHS claims is owed by the licensee.

(3) Notice of filing of petition. At the time of the filing of the petition to suspend a license, DHS shall give the licensee notice of the licensee's right to a hearing before the Hearings Department, notice of the deadline for requesting a hearing before the Hearings Department, and a form requesting a hearing for completion by the licensee for filing with the Hearings Department.

(4) Contents of notice. The notice required under this section must inform the licensee that the licensee's license will be suspended on the 60th day after the date of service of the notice unless the licensee pays the amount owed to DHS; the licensee presents evidence of a payment history satisfactory to DHS in compliance with a reasonable repayment schedule; or the licensee appears at a hearing before the Hearings Department and shows that the petition for suspension of a license should be denied or that an order suspending the license should be stayed.

(5) Service. DHS shall serve the notice required under this section in accordance with the rules for service in civil cases under the Texas Rules of Civil Procedure.

(i) Special requirements for administrative penalties assessed pursuant to §242.066 of the Texas Health and Safety Code. A notice of adverse action to a person shall include a brief summary of the charges; the amount of the recommended penalty; whether the violation is subject to correction, and, if so, the date by which the institution must file a plan of correction and the date by which the plan of correction must be filed to avoid assessment of the penalty; and a statement that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

§79.1604. Request for a Hearing.

(a) Time for filing. Unless otherwise provided by statute or this section, a person must file a written request for a hearing with the Hearings Department so that the Hearings Department receives the written request within 15 days from the date the person receives the Texas Department of Human Services' (DHS's) notice of adverse action.

(b) Form of request. The request must be in writing, in the form of a petition or letter, and must state the basis of the appeal of the adverse action.

(c) Referral to administrative law judge. Upon receipt of a request for a hearing, the director of the Hearings Department will assign the appeal to an administrative law judge for disposition according to this subchapter.

(d) Special requirements for nurse aide appeals. A nurse aide must file a written request for a hearing with the Hearings Department so that the Hearings Department receives the written request within 30 days from the date the nurse aide receives DHS's notice of adverse action.

(e) Special requirements for medication aide appeals. A medication aide or an applicant for a medication aide permit must file a written request for a hearing with the Hearings Department so that the Hearings Department receives the written request within 30 days from the date the medication aide or applicant receives DHS's notice of adverse action.

(f) Special requirements for nursing facility administrator administrative penalty appeals. Within 20 days from the date the administrator receives DHS's notice of assessment of an administrative penalty, the administrator may file with the Hearings Department a written acceptance of the determination and the penalty recommended by DHS or a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Special requirements for motor vehicle and recreational license appeals. If a licensee wishes to request a hearing on DHS's petition to suspend a license, the licensee must file a written request for a hearing with the Hearings Department not later than the 20th day after the date of service of the notice.

(h) Special requirements for administrative penalty appeals pursuant to §242.066 of the Texas Health and Safety Code.

(1) Not later than the 20th day after the date on which DHS's notice of adverse action is sent, the person may give written consent to the recommended penalty, submit a plan of correction if the violation is subject to correction, or make a written request for a hearing.

(2) If a plan of correction has been submitted and rejected, then, not later than the 20th day after the date on which DHS's notice that the plan of correction is rejected is sent, the person may give written consent to the recommended penalty or make a written request for a hearing.

(i) Election of arbitration as alternative to hearing.

(1) A person or DHS may elect binding arbitration as an alternative to a hearing for any of the following adverse actions, unless the United States Health Care Financing Administration requires that the appeal be resolved by the federal government:

(A) failure to renew a license pursuant to the Texas Health and Safety Code, §242.033;

(B) suspension or revocation of a license pursuant to the Texas Health and Safety Code, §242.061;

(C) assessment of a civil penalty pursuant to the Texas Health and Safety Code, §242.065;

(D) assessment of a monetary penalty pursuant to the Texas Health and Safety Code, §242.066; or

(E) assessment of a penalty pursuant to the Texas Human Resources Code, §32.021(k).

(2) The rules and procedures for electing arbitration as an alternative to a hearing are codified at 1 Texas Administrative Code Chapter 163 (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources).

§79.1605. Notice of Hearing.

(a) Setting the hearing date. Within 30 days of the date of the request for hearing, the administrative law judge selects a hearing date in response to the request for hearing.

(b) Scheduled hearing date. The administrative law judge must give the parties written notification of the hearing date at least 20 days before the date of the hearing.

(c) Contents of notice. The written notice of hearing must include a statement of the time, date, and location of the hearing and

a statement of the legal authority and jurisdiction under which the hearing will be conducted.

(d) Service of notice. The notice of hearing may be served upon the parties in the manner deemed by the Hearings Department as being the most reliable method to ensure receipt of service by the parties. The method of service need not be identical for each party.

(e) Expedited hearings. Upon written motion for either party for good cause shown, the administrative law judge may expedite the hearing. The administrative law judge must give the parties notice of the date of the expedited hearing at least ten days prior to the hearing date.

(f) Special requirements for nursing facility administrator administrative penalty appeals. If the administrator requests a hearing regarding assessment of an administrative penalty or fails to respond to the Texas Department of Human Services (DHS's) notice of assessment of an administrative penalty and recommended penalty, the Hearings Department shall set a hearing on the determination of violation and recommended penalty, and give the notice provided by this section.

(g) Special requirements for Summer Food Service Program appeals. In any appeal involving the federal Summer Food Service Program, a hearing must be scheduled and held within 14 days of the date the request for hearing is received by DHS.

§79.1606. Venue.

(a) General venue. Unless otherwise noted by statute or this section, the hearing shall be conducted in Austin, Texas.

(b) Contractor block grant fund reductions. In any hearing on reduction of a contractor's block grant funds, the Texas Department of Human Services (DHS) must hold one session of the hearing in the contractor's locality if requested in writing by a locally elected official or an organization with at least 25 members.

(c) Special requirements for nurse aide appeals. In any appeal involving a nurse aide, the hearing shall be conducted in the DHS office nearest to the place of residence of the nurse aide.

(d) Special requirements for medication aide appeals. In any appeal involving a medication aide or an applicant for a medication aide permit, the hearing shall be conducted in the DHS office nearest to the place of residence of the medication aide or applicant.

(e) Special requirements for motor vehicle and recreational license appeals. Hearings involving motor vehicle and recreational licenses shall be conducted by telephone unless the administrative law judge finds that there is good cause to conduct the hearing in person.

(f) Application for change of venue. Either party may file a written application with the administrative law judge requesting that the hearing be conducted at some location other than that specified in this section. The administrative law judge shall order a change in the location of the hearing if the administrative law judge finds that such is necessary for a full and fair resolution of the appeal.

(g) Telephone hearings.

(1) Filing. The administrative law judge, upon written motion of either party filed at least 14 days prior to the hearing date, may order all or part of the hearing to be conducted by telephone.

(2) Showing required. The party requesting the telephone hearing must state the reasons for the request in the motion. If the administrative law judges finds that good cause exists to permit all or part of the hearing to be conducted by telephone, the motion will be granted.

(3) Procedural rights and duties. All rights available to the parties at an in-person hearing apply to telephone hearings, subject only to the limitations of the physical arrangement. DHS shall notify the parties of the scheduled telephone hearing and the parties shall contact their respective witnesses to ensure the availability of the witnesses for the hearing.

(4) Documentary evidence. To be offered in a telephone hearing, tangible or documentary evidence must be marked and filed with the administrative law judge with a copy provided to the opposing party or the party's representative at least five working days prior to the scheduled hearing.

(5) Default. For a party to be considered as having failed to appear at a telephone hearing, one or more of the following conditions must exist for more than ten minutes after the scheduled time for hearing:

(A) failure to answer the telephone;

(B) failure to free the telephone line for a hearing; or

(C) failure to be ready to proceed with the hearing as scheduled.

§79.1607. Representation of Parties.

(a) Respondent. The Texas Department of Human Services (DHS) is represented in a hearing by an attorney appointed by the general counsel.

(b) Petitioner. The petitioner may be represented by any of the following persons:

(1) the petitioner;

(2) a licensed attorney, upon filing of a notice of representation with the administrative law judge;

(3) a non-attorney person designated in writing by the petitioner to the administrative law judge; or

(4) if the petitioner is a corporation, by an officer, board member, or any other person designated by the corporation's board of directors by written resolution of the board filed with the administrative law judge.

(c) Attorney not required. A petitioner is not required to have an attorney in order to appear and participate at a hearing. DHS will not provide an attorney to represent a petitioner.

(d) Change in representation. If a party wishes to change its representative, the party should file a written notice of substitution of representative with the administrative law judge. An attorney wishing to withdraw from representing a party should do so in accordance with the Texas Rules of Civil Procedure.

§79.1608. Prehearing Procedure.

(a) Prehearing motions.

(1) Filing. All motions must be filed with the Hearings Department.

(2) Form of motion. All motions filed prior to the hearing must be in writing and must specify the desired relief and the reasons for the requested relief and must be filed in a timely manner so as to allow for the filing of a response by the non-moving party and issuance of a ruling by the administrative law judge.

(3) Response. A party shall be allowed to file a written response to any prehearing motion with the Hearings Department.

(4) Certificate of service. All motions and responses to motions must contain a certificate stating that a copy of the motion or response has been served on the opposing party or the party's representative. The certificate must state the date and manner of service and should bear the signature of the person making the certification.

(b) Rules of Civil Procedure. In all prehearing matters not specifically addressed by this section, the Texas Rules of Civil Procedure will apply, unless the administrative law judge finds that there is good cause for waiving those rules.

(c) Prehearing conference. On the motion of either party or on the administrative law judge's own motion, the administrative law judge may direct the parties to appear for a prehearing conference for the purpose of simplifying the issues in the case, narrowing the scope of the hearing, or for any other purpose the administrative law judge finds is necessary. The administrative law judge may order that certain information be exchanged by the parties by a date prior to the hearing date, including, but not limited to, the following:

(1) a list of witnesses each party may call to testify;

(2) a written statement of the disputed issues for consideration at the hearing;

(3) copies of any written testimony to be offered at the hearing; and

(4) copies of documentary evidence to be offered at the hearing.

(d) Respondent's statement of the case. At least ten days before the hearing date, or at least three days before the hearing date in an expedited case, the Texas Department of Human Services (DHS) must ensure that the petitioner and the administrative law judge receive a statement of the case that includes a concise statement of the matters asserted by DHS in support of its adverse action and a reference to the particular sections of all statutes, rules, and regulations upon which DHS relies.

(e) Petitioner's statement of the case. Upon a timely written motion from the respondent, the administrative law judge may order the petitioner to file a statement of the case that includes a concise statement of the matters asserted by the petitioner in support of its position and a reference to the particular sections of all statutes, rules, and regulations upon which the petitioner relies. Such statement shall be filed at least ten days before the hearing date, or at least three days before the hearing date in an expedited case.

(f) Postponement or continuance of hearing.

(1) Motion in writing and time for filing. If either party desires to postpone or continue the hearing, such party must file a sworn written motion for continuance at least seven days prior to the date set for the hearing.

(2) Contents of motion. The motion must specify the reasons for the continuance and must make reference to all prior motions for continuance filed in the same proceeding.

(3) Failure to comply. Failure to comply with the requirements of this subsection, except for good cause shown by the party seeking the continuance, shall be grounds for the administrative law judge to deny the motion.

(4) Order. The administrative law judge shall issue an order denying or granting a motion for continuance properly filed under this subsection. The decision to grant or deny the motion for continuance shall be solely at the discretion of the administrative law judge.

§79.1609. Discovery and Depositions.

(a) Discovery. Unless otherwise specified in this section, discovery shall be conducted pursuant to the Texas Rules of Civil Procedure.

(b) Copy of previous statement. Any person, including a non-party, is entitled to and may obtain a copy of a statement in a party's possession, custody, or control that the person has previously made about the contested case or its subject matter. A statement is considered to be previously made if it is:

(1) a written statement signed or otherwise adopted or approved by the person making it; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription of the recording, which is a substantially verbatim recital of an oral statement by the person making it and which was contemporaneously recorded.

(c) Depositions.

(1) Commission to take deposition.

(A) Issuance of commission. Upon written motion and the deposit of an amount that will reasonably ensure payment of the amounts estimated to accrue under this section, the administrative law judge may issue a commission, addressed to the officers authorized by statute to take depositions, requiring that the deposition of a witness be taken.

(B) Subpoena. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding.

(C) Requirements of officer taking deposition. The commission shall require an officer to whom it is addressed to:

(i) examine the witness before the officer on the date and at the place named in the commission; and

(ii) take answers under oath to questions asked the witness by a party to the proceeding, the state agency, or an attorney for a party or the agency.

(D) Witness to remain in attendance. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(2) Place of deposition. A deposition in a contested case shall, in the absence of agreement by the parties, be taken in the county where the witness resides, is employed, or regularly transacts business in person.

(3) Objections to deposition testimony. Objections to deposition testimony are reserved for the action of the administrative law judge. The administrative law judge may consider objections other than those made at the taking of the deposition.

(4) Submission of deposition to witness.

(A) Deposition submitted to witness. The deposition shall be submitted to the witness for examination after the testimony is fully transcribed and shall be read to or by the witness. The witness and the parties may waive the examination by written agreement. If the witness is a party and is represented by counsel, the deposition officer shall notify the attorney that the deposition is ready for examination and reading at the office of the deposition officer and

that if the witness does not appear and examine, read, and sign the deposition before the 21st day after the date on which the notice is mailed, the deposition shall be returned as provided by this section for unsigned depositions.

(B) Changes to deposition. The officer taking a deposition shall enter on the deposition a change in form or substance that the witness desires to make and a statement of the reasons given by the witness for making the change. After the change and statement of reasons for the change have been entered, the witness shall sign the deposition.

(C) Signature of witness. A witness must sign a deposition at least three days before the date of the hearing or the deposition shall be returned by the officer as an unsigned deposition.

(D) Failure of witness to sign. If a deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness's waiver, illness, absence, or refusal to sign and the reason given, if any, for failure to sign. The deposition shall then be used as though signed by the witness.

(5) Return of deposition to Hearings Department. A deposition may be returned to the Hearings Department by mail or by hand-delivery. If returned by mail, the Hearings Department employee receiving the deposition shall endorse on the deposition that it was received by mail and sign the deposition. If returned by hand-delivery, the person delivering the deposition shall sign an affidavit before the Hearings Department stating that the person delivering the deposition received the deposition from the officer who took the deposition, that the deposition has not been out of the deliverer's possession since receipt from the officer, and that the deposition has not been altered.

(6) Opening of deposition by Hearings Department employee. At the request of a party, a deposition may be opened by a Hearings Department employee. The Hearings Department employee who opens the deposition shall endorse on the deposition the date and at whose request it was opened, and then sign the deposition. The deposition shall remain on file with the Hearings Department for inspection by the parties.

(7) Use of deposition. A party is entitled to use a deposition without regard to whether a cross-interrogatory has been propounded.

(8) Expenses.

(A) Non-party witness. A non-party witness is entitled to receive:

(i) ten cents for each mile from and to the place of the deposition if the place is more than 25 miles from the witness's residence and if a personal motor vehicle is used for travel;

(ii) reimbursement of transportation expenses to and from the place of the deposition if the place is more than 25 miles from the witness's residence and the witness does not use a personal motor vehicle for travel;

(iii) meal and lodging expenses if the witness's residence is more than 25 miles from the place of the deposition; and

(iv) $10 for each day or part of a day that the person is necessarily present.

(B) Payment of expenses. Amounts required to be paid by this section shall be paid by the party at whose request the witness appears. If the Texas Department of Human Services (DHS) is required to pay the witness, expenses shall not exceed the maximum rates provided by law for state employees.

(9) Failure to comply with a commission. If a person fails to comply with a commission, DHS, acting through the attorney general, or the party requesting the commission may bring suit to enforce the commission in the county in which the hearing is conducted.

(d) Abuse of discovery; sanctions.

(1) Motions for sanctions or order compelling discovery. A party may make written motion to the administrative law judge for an order compelling discovery or for sanctions. A party may request sanctions without having first obtained an order compelling discovery.

(2) Failure to comply with order or with discovery request. If a party or a person designated to testify on behalf of a party fails to comply with a proper discovery request or to obey an order compelling discovery, an administrative law judge may, after opportunity for hearing, make orders in response to the failure, including any of the following orders:

(A) preventing the non-responding party from conducting further discovery;

(B) charging the non-responding party, the party representative, or both with the expenses of discovery or taxable costs:

(C) deeming any facts pertaining to the order, or any other facts, to be established, as claimed by the moving party;

(D) disallowing the non-responding party from supporting or opposing designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

(E) striking pleadings or parts of pleadings;

(F) staying further action until the order is obeyed;

(G) dismissing the proceeding with or without prejudice; or

(H) rendering a default judgment against the non-responding party.

(3) Abuse of the discovery process. The administrative law judge may impose any of the sanctions specified in this subsection on a party who abuses the discovery process in seeking or resisting discovery or who files a request, response, or answer that is frivolous, oppressive, or made for the purpose of delay.

(4) Failure to supplement discovery. A party who fails or refuses to supplement a response to a discovery request may not present evidence that the party was under a duty to provide in an initial or supplemental response to a discovery request, and may not offer the testimony of an expert witness or of any other person having knowledge of the discoverable matter, unless the administrative law judge finds good cause to permit the evidence despite the noncompliance. The burden of establishing good cause is upon the party offering the evidence, and good cause must be shown in the record.

(5) Record of basis for sanction. The administrative law judge shall state the specific basis for any sanction in the record or in a written order.

§79.1610. Informal Disposition of Appeal.

At any time before the conclusion of the hearing, informal disposition of a case may be made, in writing, by stipulation, agreed settlement, consent order, default, or withdrawal of the request for a hearing by the petitioner.

§79.1611. Conduct of Hearings.

(a) Authority of administrative law judge. The administrative law judge is in charge of the hearing. The administrative law judge has the authority to:

(1) administer oaths;

(2) examine witnesses;

(3) issue subpoenas;

(4) consolidate causes of action;

(5) rule on admissibility of evidence;

(6) establish reasonable time limits for conducting hearings;

(7) request information;

(8) issue intermediate orders;

(9) limit the witnesses to be called by the parties; and

(10) issue orders necessary to enforce rulings, including, but not limited to:

(A) exclusion of evidence;

(B) exclusion of witnesses;

(C) summary orders or default judgment on any issue; and

(D) postponement or dismissal of the hearing, with or without prejudice to a party.

(b) Decorum. Each party, witness, attorney, representative, or other person involved in the hearing shall show proper dignity, courtesy, and respect for the hearing process and for the hearing participants. The administrative law judge may take any action necessary to maintain proper decorum and conduct including, but not limited to:

(1) recessing the hearing;

(2) continuing the hearing to reconvene at another time or place; and

(3) excluding any person from the hearing for a period and under conditions that the administrative law judge considers fair and just.

(c) Record. A record must be made of the hearing that includes:

(1) all pleadings, motions, and intermediate rulings and orders;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings;

(5) proposed findings of fact and conclusions of law and exceptions;

(6) the decision; and

(7) all staff memoranda or data submitted to or considered by the administrative law judge.

(d) Stenographic record. A stenographic record of each hearing on the merits must be made. If requested by the administrative law judge, the proceedings must be transcribed and transcript given to the administrative law judge. The costs associated with recording and preparing the transcript may be assessed to one or more parties. If a party wants a transcript of the hearing, that party must pay all costs associated with providing the transcript. If a party fails to appear at a hearing the administrative law judge may assess court reporter costs against the party or parties failing to appear.

(e) Rules of procedure. In all procedural matters not specifically provided for in this subchapter, the Texas Rules of Civil Procedure will be followed unless the administrative law judge determines that there is good cause for waiving the Texas Rules of Civil Procedure.

(f) Evidence. The Texas Rules of Civil Evidence will be followed except that, when necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence otherwise inadmissible may be admitted, unless precluded by statute, if it is the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(g) Presentation of cases. Subject to any rulings and orders of the administrative law judge, all parties shall have the opportunity to present evidence and argument on all issues involved, and to respond to evidence and arguments presented. Each party will have the opportunity to call witnesses, cross-examine witnesses, and present rebuttal testimony. The administrative law judge may call a witness or direct a party to call a witness whose testimony the administrative law judge believes is necessary to make a final decision.

(h) Subpoenas. On the written request of any party, on a showing of good cause, and on deposit of sums that will reasonably ensure payment of the amounts estimated to accrue under this section, the administrative law judge may issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings. The party requesting the subpoena is responsible for preparation and service of the subpoena. If a party is not represented by an attorney, the administrative law judge may prepare the subpoena. If a person fails to comply with a subpoena, the requesting party may bring suit to enforce the subpoena in a district court in the county in which the hearing is conducted.

(i) Failure of parties to appear. If a party or the party's representative is notified of the hearing and fails to appear, all matters stated in evidence introduced at the hearing may be considered as uncontroverted.

§79.1612. Final Decisions and Orders.

(a) Form of final decision. A final decision shall be in writing and shall include separately stated findings of fact and conclusions of law.

(b) Orders. The administrative law judge shall enter all orders necessary to implement the final decision. The administrative law judge may also make recommendations that the administrative law judge considers appropriate to the case.

(c) Time for issuing decisions. Unless otherwise provided by statute or by this section, a decision shall be issued on or before the expiration of 60 days from the date the hearing is closed.

(d) Manner of issuing decisions. Decisions shall be mailed by certified mail, return receipt requested, to the parties or their representatives. If a decision is returned unclaimed, the decision shall be re-mailed by regular mail service. Decisions may be hand-delivered or sent by intra-agency mail to the Texas Department of Human Services (DHS). A decision is deemed issued on the date it

is mailed, hand-delivered, or placed in intra-agency mail. A decision that has been re-mailed after being returned unclaimed is deemed issued on the date it is first mailed, if mailed to the last known address of the addressee.

(e) Special requirements for nurse aide appeals.

(1) Time for issuing decision. In any action involving an appeal by a nurse aide, the final decision must be issued on or before the expiration of 120 days from the date the nurse aide's request for hearing is received by DHS.

(2) Determinations of neglect. The administrative law judge must not find that a nurse aide has neglected a resident if the nurse aide demonstrates that the neglect was caused by factors beyond the control of the nurse aide.

(f) Special requirement for medication aide appeals. In any action involving an appeal by a medication aide or an applicant for a medication aide permit, the final decision must be issued on or before the expiration of 120 days from the date the medication aide's or applicant's request for hearing is received by DHS.

(g) Special requirements for Child and Adult Care Food Program appeals. In any appeal involving the federal Child and Adult Care Food Program, the final decision must be issued on or before the expiration of 120 days from the day DHS received a request for hearing.

(h) Special requirements for Summer Food Service Program appeals. In any appeal involving the federal Summer Food Service Program, the final decision must be issued on or before the expiration of five days from the date the hearing is closed.

(i) Special requirements for nursing facility administrator administrative penalty appeals. When a final decision is issued in any appeal involving an administrative penalty, a notice shall be provided to the administrator of the administrator's right to judicial review of the final decision.

(j) Special requirements for motor vehicle and recreational license appeals.

(1) Order suspending a license.

(A) The administrative law judge shall issue an order suspending the licensee's license if the administrative law judge finds that, after notice of the adverse action from DHS, the licensee:

(i) failed to reimburse DHS for an amount in excess of $250 granted in error to the licensee under the Food Stamp program or the program of financial assistance under Chapter 31 of the Texas Human Resources Code;

(ii) has been provided an opportunity to make payments toward the amount owed under a repayment schedule; and

(iii) failed to comply with a repayment schedule previously entered into by DHS and the licensee.

(B) The administrative law judge may order the licensee to refrain from engaging in the licensed activity as a part of any final order suspending a license.

(C) If the administrative law judge does not make the findings set out in subparagraph (A) of this paragraph, the administrative law judge shall dismiss DHS's petition to suspend a license, without prejudice, and shall not issue an order suspending the licensee's license.

(D) The Hearings Department shall forward a final order suspending a license to the appropriate licensing authority, except as provided in subparagraph (F) of this paragraph.

(E) The administrative law judge may stay an order suspending a license conditioned on the licensee's compliance with a reasonable repayment schedule that is incorporated in the final order suspending a license.

(F) A final order suspending a license that incorporates a stay of such suspension shall not be served on the licensing authority unless the stay is revoked.

(2) Allegations of petition deemed admitted. The administrative law judge shall deem the allegations of the petition for suspension of license to be admitted and shall render an order suspending a license if the licensee fails to respond to the notice of adverse action issued by the DHS, request a hearing, or appear at a hearing.

(3) Revocation of the stay of an order suspending a license.

(A) DHS may file a motion with the Hearings Department seeking to revoke the stay of an order suspending a license if the licensee does not comply with the terms of a reasonable repayment plan made part of the order suspending a license.

(B) The motion seeking to revoke the stay of an order suspending a license must allege the manner in which the licensee failed to comply with the payment plan.

(C) Upon receipt of a motion to revoke the stay of an order suspending a license, the Hearings Department shall issue notice by certified mail, return receipt requested, to the licensee. The notice shall include:

(i) a statement that the motion was filed, including the date and time of the filing; and

(ii) the date, time, and location of the hearing on the motion.

(D) The licensee shall be given no less than ten day's notice prior to the hearing on the motion to revoke the stay of the order suspending the license.

(E) If, after the hearing, the administrative law judge finds that the licensee has not complied with the terms of the repayment plan contained in the order suspending the license, the administrative law judge shall revoke the stay of the order and render a final order suspending the license.

(4) Vacating or staying order suspending a license.

(A) The administrative law judge may, upon written motion filed with the Hearings Department, vacate or stay an order suspending a license.

(B) A motion to vacate an order suspending a license must allege that the licensee has paid all amounts owed to DHS.

(C) A motion to stay an order suspending license must allege that the licensee has established a satisfactory payment record with DHS.

(D) Upon receipt of a motion to vacate or stay an order suspending a license, the Hearings Department shall transmit a copy of the motion to the non-movant.

(E) Upon receipt of a motion to vacate or stay an order suspending a license, the non-movant will have ten days in which to file a written response in support of or in opposition to the motion.

(F) Upon receipt of a written response in opposition to a motion to vacate or stay an order suspending a license, the Hearings Department shall set the motion for a hearing not less than ten days from the date of the notice of the hearing. The Hearings Department shall notify the parties of the date, time and location of the hearing.

(G) If the administrative law judge finds that all amounts owed to DHS have been paid, the administrative law judge shall enter an order vacating the order suspending the license.

(H) If the administrative law judge finds that the licensee has established a satisfactory payment record, the administrative law judge shall enter an order staying the order suspending the license.

(I) The Hearings Department shall promptly deliver all orders vacating or staying an order suspending a license to the appropriate licensing authority.

(J) An order issued under this section does not preclude DHS from seeking any other relief provided by law, including that provided by this subchapter.

(k) Special requirements for administrative penalty appeals pursuant to §242.066 of the Texas Health and Safety Code.

(1) Contents of decision. The administrative law judge shall find that:

(A) a violation has occurred and assess a penalty; or

(B) a violation has not occurred.

(2) Notice of decision. The commissioner shall provide written notice of the decision to the person. If the decision is adverse to the person, the commissioner shall further notify the person as to the amount of the penalty, the interest rate, the date upon which interest begins to accrue, whether the penalty should be paid in full or whether the penalty will be ameliorated, and the person's right to judicial review of the decision.

§79.1613. Motions for Rehearing.

(a) Filing. Either party may file a written motion for rehearing. Any motion for rehearing must be filed with and received by the Hearings Department on or before the 20th day after the date on which the final decision was mailed.

(b) Reply. A written reply to a motion for rehearing must be filed with and received by the Hearings Department on or before the 30th day after the date on which the final decision was mailed.

(c) Order on motion. The administrative law judge shall rule on a motion for rehearing not later than the 45th day after the date on which the final decision was mailed or the motion for rehearing is overruled by operation of law.

(d) Extension of deadlines. The administrative law judge may, by written order extend the time of filing a motion or reply or for ruling on the motion for a period not to exceed the 90th day after the day on which the final decision was mailed.

(e) Shortening the time for filing. The parties may, in writing or on the record, agree to a date other than that provided by this section for filing a motion for rehearing if the specified date is not before the date the order is signed or later than the 20th day after the date the order is issued.

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

Filed with the Office of the Secretary of State, on January 23, 1998.

TRD-9801068
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 438–3765

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Part XX. Texas Workforce Commission

Chapter 800. General Administration

Subchapter G. Petition for Adoption of Rules

40 TAC §§800.251–800.255

The Texas Workforce Commission (Commission) proposes new §§ 800.251-800.255, concerning the Petition for Adoption of Rules.

New Subchapter G., Petition for Adoption of Rules, is proposed as the location of new §§800.251-800.255.

New Subchapter G in Chapter 800 provides the form and procedure for processing a petition for the adoption of rules.

New § 800.251 sets forth the short title and purpose for this subchapter.

New § 800.252 sets forth the definitions that apply to this subchapter.

New § 800.253 sets forth the procedure for submission and the petition requirements that apply to this subchapter.

New § 800.254 sets forth the procedure for reviewing the petitions submitted pursuant to this subchapter.

New § 800.255 sets forth a description of Commission action that may result from the submission made pursuant to this subchapter.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be minimal fiscal implications as a result of enforcing or administering the rules. There will be minimal additional costs to the state as a result of enforcing the rules. There will be no reduction in costs to the state. There will be no costs to local governments.

J. Ferris Duhon, Acting Deputy Director of Legal Services, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the enhanced ability of the public to recommend rules to the Commission. There is no anticipated effect on small businesses and there are no anticipated costs to persons who are required to comply with the rules as proposed.

All official comments submitted to J. Ferris Duhon will be considered before the final rules are adopted. Comments on the proposed rules may be submitted to J. Ferris Duhon, Acting Deputy Director of Legal Services, Texas Workforce Commission Building, 101 East 15th Street, Room 264, Austin, Texas

78778 (512) 463-2293. Comments may also be submitted via fax to J. Ferris Duhon at (512) 463-1426, or e-mailed to: ferris.duhon@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on March 10, 1998 for consideration.

The new rules are proposed under Texas Labor Code, §301.061 which provides the Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act and Texas Government Code, §2001.021 which provides for the Commission to promulgate by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition of the petition.

The proposed rules affect the Texas Labor Code, Title 4.

§800.251. Title and Purpose.

(a) Title. These rules may be cited as the Petition for the Adoption of Rules.

(b) Purpose. The purpose of these rules is to implement the provisions of Texas Government Code §2001.21 regarding agency procedure for addressing petitions for the adoption of rules.

§800.252. Definitions.

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

Commission –The Texas Workforce Commission.

§800.253. Submission and Petition Requirements.

Any interested person may petition the Texas Workforce Commission (Commission) requesting the adoption of a rule. Petitioners should submit petitions in writing to the General Counsel of the Commission. The petition may be in any legible form but must contain at least the following information.

(1) Petitioner's Name and Address. The petitioners' name, complete mailing address, and signature should appear in the request.

(2) Explanation and Justification. A petitioner should include an explanation and justification of the proposed rule. The explanation should include a concise statement of the relevant background information necessary to understand the need for the rule, the existing problem that the proposed rule is to correct, and the foreseeable effects of the requested rule.

(3) Text. A petitioner should include the text of the proposed rule reflecting added or deleted words. A reference to any existing rule including the title, chapter and section number, if applicable, should appear on the request.

(4) Authority. A statement of the statutory or other authority for taking the requested action should also appear on the request.

§800.254. Review of Petition.

Upon receipt of a substantially complete petition, the general counsel will forward a copy of the petition to the appropriate division director for a response.

(1) Division Response. Within 20 days after receiving the petition from the general counsel, the division director shall respond in writing to the General Counsel recommending either denying the request or initiating the rulemaking process. The division director's response shall contain the reasons for the recommendation.

(2) General Counsel Recommendation. Within 20 days after receiving the division director's response, the general counsel shall submit to the commissioners the petition, the division director's response and a written recommendation by the general counsel specifying the reasons for the recommendation.

§800.255. Commission Decision and Action.

(a) The Commissioners shall issue the final decision regarding the petition within 60 days after receipt of the petition from the petitioner to either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate rulemaking proceedings in accordance with Texas Government Code, Chapter 2001, Administrative Procedure, Subchapter B, Rulemaking, as it may be amended.

(b) The Commission may modify any proposed rule to ensure that it conforms to the format of commission rules, adequately addresses the perceived problem, and conforms to the filing requirements of the Texas Register.

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 January 23, 1998.

TRD-9801076
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: March 9, 1998
For further information, please call: (512) 463–8812

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

Chapter 651. Fees

22 TAC §651.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Executive Council of Physical Therapy and Occupational Therapy Examiners has been automatically withdrawn. The amended section as proposed appeared in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6817).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801477

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter F. Inland Marine Insurance

Definition and Classification of Inland Marine Insurance

28 TAC §5.5002

The Texas Department of Insurance has withdrawn from consideration for permanent adoption proposed amendments to §5.5002, relating to inland marine insurance, which appeared in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7333).

The department has withdrawn the section after careful consideration of comments submitted after publication of the proposal. Elsewhere in this issue, the department has published for comment proposed amendments to §5.5002, relating to inland marine insurance, addressing filing and approval of rules, rates and forms for certain classes of inland marine insurance.

Filed with the Office of the Secretary of State on January 26, 1998.

TRD-9801146

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 26, 1998
For further information, please call: (512) 463–6327

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter GG. Insurance Tax

34 TAC §3.827

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new section, submitted by the Comptroller of Public Accounts has been automatically withdrawn. The new section as proposed appeared in the June 27, 1997, issue of the *Texas Register* (22 TexReg 6094).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801478

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 143. Executive Clemency

Reprieve of Execution

37 TAC §143.42

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Texas Board of Pardons and Paroles has been automatically withdrawn. The amended section as proposed appeared in the June 17, 1997, issue of the *Texas Register* (22 TexReg 5816).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801481

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37 TAC §143.43

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Texas Board of Pardons and Paroles has been automatically withdrawn. The amended section as proposed appeared in the June 17, 1997, issue of the *Texas Register* (22 TexReg 5817).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801482

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 181. General Rules of Practice and Procedures

Subchapter A. General Provisions

40 TAC §181.41

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repealed section, submitted by the Texas Commission for the Deaf and Hard of Hearing has been automatically withdrawn. The repealed section as proposed appeared in the June 3, 1997, issue of the *Texas Register* (22 TexReg 4871).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801479

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Subchapter F. Fees

40 TAC §181.840

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repealed section, submitted by the Texas Commission for the Deaf and Hard of Hearing has been automatically withdrawn. The repealed section as proposed appeared in the June 3, 1997, issue of the *Texas Register* (22 TexReg 4873).

Filed with the Office of the Secretary of State on February 3, 1998.

TRD-9801480

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 5. Budget and Planning Office

Subchapter A. Federal and Intergovernmental Coordination

Uniform Grant Management Standards

1 TAC §§5.141–5.147, 5.150, 5.151, 5.167

The Governor's Office adopts amendments to §§5.141–5.147, 5.150, 5.151, and 5.167, concerning Uniform Grant and Contract Management Standards, with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9397). These changes are necessary to conform the standards to changes in OMB Circular A-87, clarify the state annotations to OMB Circular A-102 to reduce confusion and to substitute OMB Circular A-133, with state annotations, for OMB Circular A-128, which has been rescinded.

Comments were received from state agencies (Governor's Office, Texas Natural Resource Conservation Commission, Texas Work Force Commission, Texas Department of Transportation, Texas Department of Mental Health-Mental Retardation and the State Auditor's Office); councils of governments (Houston-Galveston Area Council, Nortex Regional Planning Commission and the North Central Texas Council of Governments) and from the Texas Association of Regional Councils (TARC). Concerns voiced included opposition to requiring prior awarding agency approval of certain actions by grantees; questions on definitions; the role of the state single audit coordinating agency; indirect cost plan approval procedures and audits of such plans; and the need for greater specificity in certain terms, such as "reasonable" and "adequately documented". Three meetings were held with representatives of all commenting entities to discuss and resolve the issues raised in the comments. The final rule, as proposed, reflects agreements reached in those meetings.

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

§5.141 Introduction.

The Governor's Budget and Planning Office proposes adoption of revisions to §§5.141-5.167 published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9398). This rule is being revised to conform the standards to changes in OMB Circular A-87, clarify the state annotations to OMB Circular A-102 as necessary and to substitute OMB Circular A-133, with state annotations, for OMB Circular A-128, which was rescinded effective June 30, 1997, with the adoption by the federal government of the revised OMB Circular A-133. To reduce confusion as to the applicability of the standards, they have been renamed "The Uniform Grant Management Standards" (UGMS). The Uniform Grant Management Standards were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Act of 1981. The federal circulars have been renamed and extensively modified to reflect state law, policies and practices. Pursuant to the Act and Chapter 2105, Texas Government Code, the prescribed standard financial management conditions and uniform assurances are applicable to all grants and contracts executed between state agencies, local governments and other affected entities, as described in §5.142(b).

§5.142. Purpose, Applicability, and Scope.

(a) Purpose. The Uniform Grant and Contract Management Act of 1981 directed the governor's office to establish uniform grant and contract administration procedures " to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies." These standards further that objective by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

(b) Applicability. Chapter 783 of the Texas Government Code specifically applies the standards only to state and local governments. School districts, state colleges and universities and special districts are specifically excluded by law from having to comply with these standards. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all of their grantees. In addition, Chapter 2105, Texas Government Code (1 TAC 5.167(c)) subjects all subrecipients of federal block grants to the standards. Therefore, recipients and subrecipients other than state and local governments, including nonprofit organizations, should ascertain from their awarding agencies whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law shall apply.

(c) Scope. These standard financial management conditions and uniform assurances are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive

basis, in which there is a clear purchaser-vendor relationship, as opposed to a grantor-recipient relationship, are excluded from the requirements of these standards (see Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A(3) definition of "grantee"). State agencies may deviate from these standards only if the agency has complied with Texas Government Code, sec. 783.007(c), Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart A(6)(a)).

§5.143. Effective Date.

The effective date of the uniform cost principles and administrative requirements is 20 days following final adoption in the *Texas Register*. Grants, contracts and other financial assistance agreements entered into prior to the adoption date of these standards will be subject to the provisions of the Uniform Grant and Contract Management Standards dated February 22, 1990. The State of Texas Single Audit Circular is effective for single audits of fiscal years beginning after June 30, 1996. However, if an awarding state agency has already adopted rules in codified regulations governing single audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this single audit circular for audits of fiscal years beginning after June 30, 1997.

§5.144. Adoption by Reference.

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

§5.145. Grants and Contracts.

The terms "grants" and "contracts" as used in the Uniform Grant Management Standards are synonymous only when used to describe a financial agreement involving an awarding agency and a recipient or subrecipient. Procurement contracts or agreements in which there is a clear purchaser- vendor relationship are not covered by the Uniform Grant Management Standards.

§5.146. Standard Assurances.

A listing of major state assurances which may apply to federal pass-through and state-appropriated funds may be found in the State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart B, §___.14. Many of these assurances apply only to state agencies, and in most cases, only some will apply to a given grant. This list is subject to change, and it is the applicant's responsibility to determine which assurances are required and that all those required by the awarding agency are submitted.

§5.147. Variance from Standards.

State agencies may vary from the Uniform Grant Management Standards (UGMS) only when required to do so by federal legislation or regulations or by specific state statute. State agencies are required to publish the variance in the Texas Register and to notify the Governor's Budget and Planning Office. State agencies' rules or self-regulation are not sufficient to authorize variance from the provisions contained in the UGMS.

§5.150. Uniform Cost Principles and Cost Allocation Plans.

(a) The Uniform Grant Management Standards (UGMS), Chapter II, "Cost Principles for State and Local Governments and Other Affected Entities" sets out the basic cost principles applicable to all grants administered by a state agency which are awarded to cities, counties, other political subdivisions of the state and entities receiving state-administered funds from federal block grants. This chapter specifically includes, therefore, all federal categorical grants, federal block grants, and state grants.

(b) The basis of Chapter II is OMB Circular A-87, which designates the Department of Health and Human Services (HHS) as the federal agency responsible for issuing instructions for use by grantees in the preparation of cost allocation plans. OMB Circular A-87 is included in its entirety, with annotations showing differences between federal and state law and practices.

(c) Cities, counties, and other political subdivisions of the state seeking to establish a cost allocation plan and indirect cost rate should contact the federal Office of Management and Budget to request an assignment of a cognizant federal agency to review and approve any such plan. In those cases in which funds are received from two or more state agencies, recipients should contact the Governor's Budget and Planning Office to receive an assignment of a state single audit coordinating agency. This agency may, but is not required, to review and approve the cost allocation plan.

§5.151. Uniform Administrative, Accounting and Reporting Standards.

The basis of the Uniform Grant Management Standards (UGMS) Chapter III, "State Uniform Administrative Requirements for Grants and Cooperative Agreements", is the Common Rule of OMB Circular A-102, which has been adopted by reference in §5.144 of this title (relating to Adoption by Reference). Applicable provisions of the Common Rule have been reprinted in UGMS, with annotations showing where state law and practices differ from the Common Rule. (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart A—General, §___.4 for applicability to state and federal funds.)

§5.167. State of Texas Single Audit Circular.

(a) The basis of the Uniform Grant Management Standards (UGMS) Chapter IV, "State of Texas Single Audit Circular", is Office of Management and Budget (OMB) Circular A-133. This state audit circular is to be used in conducting single audits of state financial assistance to recipients and subrecipients. All awarding agencies are responsible for ensuring compliance with OMB Circular A-133 when federal funds are involved and for coordinating the single audit of state funds with affected federal agencies when both federal and state funds are awarded.

(b) The concept of single audit is designed to maximize the efficient and effective use of public resources, to minimize work flow disruptions for grant recipients and to provide state awarding agencies consistent audit procedures and assurances. Under these rules, a designated state single audit coordinating agency will assure that the single audit effort is well-coordinated among state funding agencies and with the federal cognizant agency. The federal cognizant agency is responsible for assuring that the independent audit is performed for federal funds in accordance with the provisions of OMB Circular A-133. No attempt is made to emulate the federal cognizant agency by the designation of the state single audit coordinating agency. Rather, the purpose is to provide an audit coordination effort at the state level to bolster the single audit concept. It must be thoroughly understood that the single audit process is available but will not replace state agency program monitoring and review of subrecipients' compliance with contractual terms and conditions throughout the grant period. As indicated by Circular A-133 and this state single audit circular, any supplemental audit work should build upon the audit accomplished by the single audit.

(c) Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under provisions of the Uniform Grant and Contract Management Standards.

(1) When a single audit is needed and two or more state agencies provide funds to a recipient covered by this circular, the subrecipient may request the designation of a state single audit coordinating agency from the Governor's Budget and Planning Office. If only one state agency provides funds, no state single audit coordinating agency will be necessary and the grant recipient should work directly with its state funding agency.

(2) To have a state single audit coordinating agency designated, a recipient must submit a written request to the Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit.

(3) Within 30 days after the receipt of the request, the Governor's Budget and Planning Office, after consultation with the state auditor, will designate a state single audit coordinating agency. The following criteria will be used in selecting the appropriate state single audit coordinating agency:

(A) state agency request or agreement to be the coordinating agency;

(B) state agency capability;

(C) amount and source of funds awarded to the grantee; and

(D) state agency workload.

(E) Request for change. A state agency or a recipient may request a change in the designation of the state single audit coordinating agency. The designation of a state single audit coordinating agency will remain in force until eliminated or revised by the Governor's Budget and Planning Office. All previous state single audit coordinating agency designations by the Governor's Budget and Planning Office will become the state single audit coordinating agencies upon the effective date of these rules.

(d) At the earliest practical date, but not later than 60 days prior to beginning a single audit, the recipient shall notify the state grantor agencies and the state single audit coordinating agency that the audit plan is being formulated. Each state grantor agency should assure that special audit issues are identified and transmitted to the recipient during this early warning period. Any subsequent additional costs of compliance which are outside the scope of OMB Circular A-133 or the State of Texas Single Audit Circular are allowable expenses to the contract being audited, as long as they are paid from nonfederal funds. The state single audit coordinating agency shall have an opportunity to review the scope of the audit and, at its option, participate in an engagement conference with the independent auditor prior to commencement of the single audit. The state single audit coordinating agency shall contact the federal cognizant agency at the earliest practicable point as necessary to coordinate when federal and state funds are involved.

(e) The state single audit coordinating agency must be provided a completed audit report by the recipient. A desk review will be accomplished by the state single audit coordinating agency to determine that the audit report covers the major elements of the State of Texas Single Audit Circular. Upon receipt of the audit report, the state single audit coordinating agency is responsible for carrying out the duties described in §___400(a)(1)-(8), Uniform Grant Management Standards.

(f) When the state single audit coordinating agency determines that the audit report meets the report requirements of this audit circular, the recipient will be so notified by letter and instructed to distribute the audit report to all state funding agencies for their review. A copy of the notification letter should accompany the distributed reports.

(g) Each state funding agency is responsible for reviewing the portion of the audit dealing with its programs and is also responsible for the necessary follow-up and resolution of audit findings that relate to its individual programs. Each affected state funding agency must notify the state single audit coordinating agency after the audit findings have been resolved as required by the appropriate funding agencies.

(h) The recipient must notify the state single audit coordinating agency and the state grantor agencies when cross-cutting audit findings have been resolved.

(i) If assigned, the federal cognizant agency is responsible for negotiating, approving and auditing indirect cost allocation plans. In the absence of a signed negotiation agreement from the federal cognizant agency, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds.

This agency 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 January 23, 1998.

TRD-9801056
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Effective date: February 12, 1998
Proposal publication date: September 19, 1997
For further information, please call: (512) 463–1788

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Universal Service Fund

16 TAC §§23.131, 23.133, 23.134, 23.136, 23.138, 23.142, 23.143, 23.147, 23.148, 23.150

The Public Utility Commission of Texas (commission) adopts new §§23.131 (relating to Texas Universal Service Fund (TUSF)), 23.133 (relating to Texas High Cost Universal Service Plan (THCUSP)), 23.134 (relating to Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan), 23.136 (relating to Implementation of the Public Utility Regulatory Act §56.025), 23.138 (relating to Additional Financial Assistance), 23.142 (relating to Service and Link Up Service Programs), 23.143 (relating to Tel-Assistance Service), 23.147 (relating to Designation of Local Exchange Carriers as Eligible

Telecommunications Providers to Receive Texas Universal Service Funds), 23.148 (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and 23.150 (relating to Administration of Texas Universal Service Fund) with changes to the proposed text published in the August 26, 1997 *Texas Register* (22 TexReg 8494). These rules are adopted under Project Number 14929.

The following parties filed initial comments in response to the proposed rules published on August 26, 1997, in the *Texas Register*: AT & T Communications of the Southwest, Inc. (AT & T); the Center for Economic Justice (CEJ); Consumers Union (CU); GTE Southwest Incorporated (GTE); MCI Telecommunications Corporation (MCI); the Office of Public Utility Counsel (OPC); PrimeCo Personal Communications, L.P. (PrimeCo); Southwestern Bell Telephone Company (SWBT); Sprint Communications Company, L.P., United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (Sprint); John Staurulakis, Inc. (JSI); Teleport Communications Houston, Inc. and TCG Dallas (TCG); the Texas Statewide Telephone Cooperative, Inc. (TSTCI); the Texas Telephone Association (TTA); and Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS).

The Advisory Commission on State Emergency Communications (ACSEC), AT & T, CU, GTE, OPC, SWBT, MCI, PrimeCo, Sprint, TCG, the Texas Association of Long Distance Telephone Companies (TEXALTEL), TSTCI, and TTA filed reply comments.

All of the parties providing comments generally supported the proposed rules; however, as summarized herein, they offered certain revisions and modifications to the proposal.

Prior to the publication of the proposed rules, the commission staff held workshops on the following dates: October 22, 1996, February 24, 1997, April 14, 1997, May 20, 1997, and June 24, 1997. In addition a commissioners' work session on Project No. 14929 was held on November 12, 1997.

A public hearing on the proposed rules was held at the commission offices on October 15, 1997, at 9:00 a.m. Representatives from GTE and TTA attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The new rules are responsive to the state and federal goals of ensuring that basic local telecommunications service can be provided at reasonable rates and in a competitively neutral manner while fostering a free competitive market in the telecommunications industry. The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. As a result of changes in pricing policies in the transition to a competitive marketplace, targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow universal accessibility by consumers. The TUSF will assist local exchange companies (LECs) in providing basic local telecommunications services at reasonable rates in high cost rural areas and to qualifying low-income consumers.

The Public Utility Regulatory Act (PURA) §51.001 prescribes the policies of Texas with respect to telecommunications. Pursuant to §51.001, the state shall promote diversity of telecommunications providers and interconnectivity, encourage a fully competitive telecommunications marketplace, and maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates. PURA §51.001 further states that the goals outlined above are best achieved by legislation that modernizes telecommunications regulation by guaranteeing the affordability of basic telephone service in a competitively neutral manner and by fostering free market competition in the telecommunications industry.

PURA, Chapter 56, specifically provides for Telecommunications Assistance and the Universal Service Fund. Subchapter B of Chapter 56 establishes the TUSF. PURA requires that the TUSF assist LECs in providing basic local telecommunications service, including Lifeline service, at reasonable rates in high cost rural areas; reimburse qualifying entities for revenues lost as a result of providing Tel-Assistance services to qualifying low-income consumers; reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications device distribution service for the hearing-impaired and speech-impaired; and reimburse the Texas Department of Human Services (TDHS), the Texas Department for the Deaf and Hard of Hearing, the TUSF administrator, and the commission for costs incurred in implementing the provisions of PURA Chapters 56 and 57.

The federal Telecommunications Act of 1996 (FTA) §254 sets forth federal universal service requirements and principles and allows a state to adopt regulations not inconsistent with the Federal Communication Commission's (FCC's) rules to preserve and advance universal service.

The FCC's Report and Order, *In the Matter of Federal-State Joint Board on Universal Service* in CC Docket Number 96-45, FCC 97-157 (May 7, 1997) (Report and Order), implemented FTA §254 and adopted a federal universal service support mechanism to ensure that all consumers have access to quality telecommunications services at affordable rates. In its Report and Order, the FCC added the principle of competitive neutrality to the principles prescribed by FTA §254. The FCC further noted in paragraphs 9 and 10 of the Report and Order that Congress specified that universal service support "should be explicit," and that as explained in the Joint Explanatory Statement of the Committee of the Conference, Congress intended that, to the extent possible, "any support mechanisms continued or created under the new section 254 should be explicit, rather than implicit as many of the support mechanisms are today." The FCC stated that universal service is currently achieved largely through implicit subsidies, and that, with the procedures and policies set forth in its Report and Order, these implicit subsidies will begin to be replaced with explicit subsidies. The existing implicit support mechanisms may not be sustainable in a competitive market because ILEC rates currently providing implicit support may be subject to competitive pressures. By "implicit subsidies" the FCC means that a single company is expected to obtain revenues from sources at levels above cost and to price other services allegedly below cost.

In paragraph 14 of the Report and Order, the FCC stated its belief that as competition develops states will be compelled by marketplace forces to move existing implicit support toward more explicit, sustainable mechanisms consistent with FTA §254(f). The commission agrees that it is appropriate state

telecommunications policy to move existing implicit support toward more explicit, sustainable mechanisms. Explicit support mechanisms must be established to maintain reasonable rates. The commission also finds that in order for the rules to be competitively neutral, and that for customers of rural and high cost areas to receive the benefits of competition, the rules must move toward making all support mechanisms available to any service provider.

Section 23.133, the Texas High Cost Universal Service Plan (THCUSP), implements PURA §56.021(1) by establishing guidelines for financial assistance to Eligible Telecommunications Providers (ETPs), which are LECs certified eligible under §23.147 for TUSF, serving high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

Section 23.133 provides that the THCUSP will support basic local telecommunications service provided by an ETP over an eligible line in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. The section also provides the definition of basic local telecommunications services.

In addition, the section establishes the criteria for determining the amount of support available under the THCUSP. The section provides that the commission shall calculate the amount of support by comparing the forward-looking economic cost for providing basic local telecommunications service to the applicable benchmark as determined by the commission for residential or single-line business service. Under this section, this support is available to an ETP for serving an eligible line whether such ETP is an ILEC or a competitive local exchange carrier (CLEC).

The section provides that, within 30 days of the effective date of the section, the commission shall initiate a proceeding to determine the support amounts. It also requires that the commission review the support amounts not less than every three years from the effective date of the section to determine, among other issues, whether there is additional or remaining implicit support that should be made explicit.

Section 23.134, the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan, also implements PURA §56.021(1) by establishing guidelines for financial assistance to ETPs that provide service in the study areas of rural ILECs' areas and small ILECs' areas in the state so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

Section 23.134 provides that this plan will support basic local telecommunications service provided by an ETP over an eligible line in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location.

In recognition that PURA and the FTA in many respects place small and rural ILECs on a different competitive footing from other ILECs, the commission, in adopting this section, establishes a support mechanism that will enable small and rural ILECs to prepare for the advent of competition and the eventual transition to the THCUSP.

The section sets forth the manner in which the amount of support shall be calculated for each small or rural ILEC study area. This support calculation is based upon existing revenue streams of small and rural ILECs and does not rely upon the calculation of forward-looking economic costs. However, this support is available to an ETP for serving an eligible line whether the ETP is an ILEC or a CLEC.

The section provides that, within 30 days of the effective date of the section, the commission shall initiate a proceeding to determine the support amounts. It also requires the commission, within 90 days of an FCC order implementing new federal universal service support rules for rural, insular, and high cost areas, to initiate a project to investigate a mechanism by which ETPs receiving support pursuant to this section would transition to receiving support pursuant to §23.133.

Section 23.136 implements the provisions of PURA §56.025. This section enables ILECs serving fewer than five million access lines to receive universal service support, if an increase in rates would adversely affect universal service, in order to offset certain governmental agency actions. In order to harmonize PURA §56.025 with the pro-competitive intent of the FTA, this section places the burden of proof on the claimant to demonstrate the adverse financial impact the government order, rule or policy had on the carrier seeking assistance under the provision of PURA §56.025(c), (d), and/or (e). Although PURA §56.025 does not require a proceeding regarding a company's revenue requirements with respect to the universal service distributions made pursuant to PURA §56.025, it does not prohibit the commission from concurrently exercising its authority to examine the overall revenue or earnings position of the ILEC seeking PURA §56.025 support if the ILEC has not elected under PURA Chapter 58, Incentive Regulation, or Chapter 59, Infrastructure Plan. Furthermore, the commission believes that it is charged with considering both increases and decreases in revenues caused by a governmental action.

Section 23.136 also sets forth the requirements of the ILEC seeking to recover funds from the TUSF under this section and the guidelines for commission processing of the applications.

Section 23.138, Additional Financial Assistance, ensures that ILECs that have been designated as ETPs, other than those regulated under PURA Chapters 58 or 59, needing funds in addition to those received under §§23.133, 23.134, or 23.136 this title, may upon a revenue requirement showing receive additional financial assistance from the TUSF.

The section also sets forth the requirements of the ILEC requesting to recover funds from the TUSF and the guidelines for the commission to use in approving the requests under this section.

Section 23.142, Lifeline Service and Link Up Service Programs, is adopted in order to provide targeted assistance to qualifying low-income customers. This section is consistent with the FCC rules regarding these programs and with the definition of basic local telecommunications services as provided in PURA §51.001(1), which includes Lifeline service.

This section defines the Lifeline and Link Up Service Programs, the Lifeline support amounts, and the obligations of the consumer, TDHS, and the eligible telecommunications carrier. It also sets forth tariff filing requirements.

Section 23.143 implements Tel-Assistance Service pursuant to PURA, Chapter 56, Subchapter B. It sets forth the requirements

for the provision of Tel-Assistance, the obligations of the consumer, TDHS, and the LEC, along with tariff filing requirements.

The commission believes that the programs prescribed by §23.142 and §23.143 will help to defray the costs of telephone service for qualifying low-income subscribers and thereby promote universal service.

Section 23.147 provides the requirements for the commission to designate LECs as ETPs to receive funds from the TUSF pursuant to PURA §56.023. The section sets forth the requirements for establishing ETP service areas, the criteria for designation of ETPs, and the designation of more than one ETP in a service area. The section also provides requirements for the application for ETP designation and commission processing of the application. Under the section, an ETP may seek to relinquish its ETP designation, and an auction procedure for replacing the sole ETP in an area is outlined.

Section 23.147 requires that for an ILEC to be designated as an ETP to receive THCUSP support, it must reduce existing revenues by an amount equal to the amount it will receive from the THCUSP or it must agree to reduce its THCUSP receipts by certain existing revenue streams. If the ETP selects the first alternative, in order to accomplish this revenue reduction, the ILEC must reduce rates, as determined appropriate by the commission. This requirement prevents an ILEC from receiving a windfall due to receipt of funds from the new THCUSP and from the revenues generated by existing rates. Also, if the ILEC chooses to reduce its rates, rather than reduce its THCUSP receipts, the rule serves to remove implicit subsidies from existing ILEC rates and make support for USF explicit.

Section 23.148 provides the requirements for the commission to designate common carriers as eligible telecommunications carriers to receive federal universal service funds. The Communications Act of 1934, as amended, 47 U.S.C. §214(e) (West Supp. 1997) (the Act), §214(e)(2) requires that state commissions designate a common carrier that meets the requirements of the Act §214(e)(1), as amended, as an eligible telecommunications carrier for a service area designated by the state commission. This section sets forth the requirements for establishing service areas, the criteria for determining eligible telecommunications carrier status, the criteria for determining an eligible telecommunications carrier's federal universal service support, and the designation of more than one eligible telecommunications carrier in a service area. The section also provides the requirements for commission proceedings and applications to designate eligible telecommunications carrier status. Under the section, the commission may designate an eligible telecommunications carrier for unserved areas, and an eligible telecommunications carrier may relinquish its designation.

Section 23.150 establishes the administration of the TUSF in compliance with PURA §§56.021, 56.022, 56.023, 56.024, and 56.026.

The section defines the programs to be included in the TUSF. It establishes the responsibilities of the commission and the requirements for and the duties of the TUSF Administrator. It provides for a transition from the existing USF programs to the TUSF and sets forth the requirements to determine the amount needed by the TUSF.

The section provides the requirements for the assessments to the TUSF and disbursements from the TUSF. In addition, it addresses the recovery of TUSF assessments. Under this section, a telecommunications provider may assess a percentage-based surcharge on all of its retail customers, except Lifeline, Link Up, and Tel-Assistance service customers.

The adopted sections also specify various reporting requirements.

The commission finds that the rules adopted prescribe a TUSF that complies with and implements the goals of PURA, the FTA, and the FCC's Report and Order. The commission finds that these rules ensure that basic local telecommunications service can be provided at reasonable rates and in a competitively neutral manner while fostering a free competitive market in the telecommunications industry.

In adopting these rules, the commission makes other minor modifications for the purposes of clarifying its intent. The commission also revises the references to PURA 1995 so that they conform to the recently adopted Texas Utilities Code. All comments including any not specifically referenced herein, were fully considered by the commission.

Section 23.133 establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) serving high cost areas of the state that are not in the study areas of small and rural ILECs.

SWBT opined that PURA §56.021 limits the commission's authority to establish a universal service fund to those areas that are both high cost and rural. SWBT suggested that the commission include a qualification in the TUSF plan that should the plan be held unlawful, participating companies could revert to their pre-TUSF plan access and toll rates. SWBT explained that the companies would then be protected against the risk that the commission's proposed language may be unlawful.

PURA §56.021 provides universal service support for "high cost rural areas." The commission interprets PURA §56.021 as allowing TUSF support for all high cost areas in Texas. FTA §254(b)(3) provides universal support for "rural and high cost areas." The commission revises §23.133(a) so that it parallels the language in PURA §56.021, and declines SWBT's suggestion to qualify the rules with regard to the commission's authority. The commission modifies §23.133(d) and §23.147(b)(2) by inserting the term "rural" so that they are consistent with §23.133(a). The commission will determine which areas of the state constitute "high cost rural areas" in the compliance proceeding held pursuant to §23.133.

Section 23.133(b) establishes definitions of words and terms used in §23.133. As proposed, §23.133(b)(2) defined business lines and §23.133(b)(9) defined residential lines.

TTA recommended revising §23.133(b)(2) and (9) to redefine "residence line" and "business line" as lines which "do not have multi-line hunting, trunking or other special capabilities." TTA explained that this change would avoid a situation where a carrier might seek funding for lines that have these capabilities, but where the carrier does not apply a separate charge for that capability.

The commission modifies the definition of business line in §23.133(b)(2) and the definition of residential line in renumbered §23.133(b)(10) by replacing the term "charges" with the term "capabilities" to eliminate the possibility of the situation described by TTA.

The commission also clarifies that an eligible line is a residential or single-line business line that an ETP serves using its own

facilities, the purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. The commission adds this definition of eligible line as the renumbered §23.133(b)(5). In addition, the commission clarifies that the ETP providing service to an end user through total service resale will not receive support for that line. Rather, the underlying ETP will receive the support if such line is an eligible line.

As proposed, §23.133(d) established THCUSP support for basic local telecommunications service (BLTS) for all flat rate residential lines and all flat rate single-line business lines. The commission requested comment on whether to restrict support payments to primary flat rate lines serving residential and business customers.

AT & T, MCI, TCG and PrimeCo advocated restricting support payments to primary lines. AT & T took the position that businesses should not be subsidized because they are for-profit ventures and that telephone service is simply a cost of doing business. AT & T argued that a subsidy for businesses without a line limitation is not good policy for the state. AT & T suggested that the commission limit the subsidy to one line per business and only for businesses that are "truly small" so as to meet the goal of promoting economic development. AT & T stated that the limitation of the subsidy to one line per residence is sound policy because it ensures that every household has access to telecommunications, but also limits the overall size of the fund.

In its reply comments, TCG advised limiting support to primary single line residential service, indicating that such a limitation is enforceable. TCG's recommended enforcement for the restriction includes customer certification, a database of support-eligible locations, and periodic audits of statistically significant samples of support recipients.

PrimeCo also urged the commission to restrict support payments to primary flat-rate lines serving residential and business customers, at least at the outset. PrimeCo argued that it seemed inappropriate to increase the bills of middle and low income Texans simply to support secondary lines used by people and businesses who were capable of paying the full cost of that secondary service.

MCI asserted that the commission should only provide TUSF support for primary residential lines because all other lines are not "basic telecommunications services." PrimeCo also argued that at this time "basic" should not include secondary residential lines for teen-agers, computers and fax machines. PrimeCo advised beginning with a narrow definition of other services that will receive support in order to minimize the impact on consumers' bills. PrimeCo indicated that if the planned re-examination of the TUSF reveals that additional lines or services merit support, the support could be broadened. PrimeCo concluded that the commission has the authority to begin an investigation at any time to examine whether rural Texans need support for secondary residential lines to participate in the information age.

GTE, TTA, PrimeCo, SWBT, and Sprint discussed the pricing implications of restricting support to primary lines. GTE argued that such a restriction would introduce an artificial distortion in the relative prices of primary and secondary lines and result in a situation that is not competitively neutral. TTA stated that restricting support payments to primary lines would result in the imposition of unfunded mandates on all ETPs, and insufficient and unpredictable support for universal service. TTA argued that ILECs that have elected regulation under PURA Chapters 58 and 59 would be restricted from increasing BLTS rates but would be required to provide high- cost additional lines at a below-cost rate. TTA also argued that non-electing ILECs would be required to file rate cases in order to recover costs. TTA stated that the remaining ETPs would also be restricted from increasing rates in a competitive market. TTA advised the commission to approve universal service support for all eligible residential and single-line business lines.

In its reply comments, PrimeCo stated that the benefits to all telecommunications customers of keeping the TUSF contribution down outweigh the extra cost borne by some ratepayers for second lines. SWBT stated that there is no reason to restrict support from second and additional lines because basic rates for these lines are subject to regulatory constraints.

Sprint argued that providing support for business lines and second residential lines widens the application of subsidies, perhaps beyond what is required to achieve universal service. Nevertheless, Sprint stated that as long as there is a disparity between the prices and the costs of providing business and additional residential lines in high cost areas, the fund must be sized to include these lines.

OPC stated that restricting support payments to primary lines would contravene two express goals of FTA: ensuring the availability of reasonably comparable services at reasonably comparable rates, and promoting use of the telecommunications network for advanced services. OPC used the same argument in its reply comments, urging that the commission reject AT & T's proposal to restrict support to the first line for both residences and businesses.

Sprint indicated that it recognizes the practical need for support payments for business lines and additional residential lines. GTE, TTA, and SWBT discussed specific practical issues related to restricting support to primary lines. GTE argued that there is no effective means to prevent customers from evading the primary/secondary distinction through the selection of a second carrier to provide another "primary" line. TTA and SWBT opined that there would be strong incentive to subscribe to multiple first lines, either under different names or from multiple ETPs, in order to avoid the higher charges.

GTE pointed out that neither MCI, AT & T, nor PrimeCo discussed how a restriction to primary residential lines could be realistically implemented, administered, or monitored in a competitive local exchange telecommunications environment. GTE urged the commission to reject their position and maintain the rule as proposed. OPC stated that determining which line is primary presents an administrative nightmare, conceivably requiring scrutiny of family relationships or living arrangements. OPC stated in its reply comments that the arbitrary determination that only one line is necessary per household undermines the ability of multi-family households to receive basic service. OPC opined that the practical difficulty of administering a one household-one line rule would make such an approach extremely burdensome. TTA concluded that customers would be confused and not understand or willingly accept the higher rates for additional lines. SWBT warned that enforcement of such a restriction would likely be impossible. SWBT stated that LECs do not have the tools to monitor their customers' living and other arrangements. SWBT stated that customers will likely not understand the reasons for a differential between their first and subsequent lines. SWBT stated that it is naive to think that

business office personnel will be able to explain adequately and intelligently the intricacies of telephone pricing and costing when customers ask about them. SWBT opined that as competition develops, prices will be more rational and customers will grow accustomed to more local pricing plans. SWBT concluded that perhaps the issue can be addressed more easily in the future.

The commission declines to modify §23.133(d) with respect to providing support to all residential lines. The commission shares the concerns raised by AT & T, MCI, TCG, and PrimeCo that providing universal service support in high cost areas for second residential connections and businesses with multiple connections is not necessary to fulfill the goal of universal service which is to ensure that every household has access to BLTS. The commission is also mindful that overly expansive universal service support mechanisms may potentially harm all consumers by increasing the expense of telecommunications services for all. From a pragmatic perspective, however, the commission agrees that the administrative and practical problems the parties have identified with restricting support to primary flat rate lines serving residential customers constitutes a compelling argument against modification of the rule at this time. Further development of the competitive telecommunications marketplace may address some of the problems associated with customer confusion, price signals, and practical administration of restricted residential support described by the parties. The commission will revisit these issues when it reviews TUSF rules in three years.

Since the number of business lines is significantly smaller than that of residential lines, it is the commission's opinion that LECs can more easily overcome the practical problems associated with restricting the number of single-line business lines supported. Therefore, the commission revises §23.133(d) so that an ETP shall receive THCUSP support for the first five single-line business lines it serves at a business customer's premises. It is the commission's opinion that this restriction will appropriately limit the scope of TUSF support while ensuring that rates for BLTS are reasonable for all small businesses.

Section 23.133(d)(1) sets forth the initial definition of BLTS. Section 23.133(d)(1)(E) itemized access to 911 service and dual party relay service as part of BLTS.

TCG recommended that §23.133(d)(1)(E) be broken into separate elements, so that access to 911 services is listed separately from dual party relay service. TCG wanted to modify language regarding the criteria to be mandatory by inserting the word "shall" in the introductory language to the list of criteria.

The commission notes TCG's comment regarding §23.133(d)(1)(E) and separates access to 911 service from dual party relay service by creating a new subparagraph (F) in §23.133(d)(1). Lifeline and Tel-Assistance are included in the definition of BLTS in PURA §51.002. Therefore, for clarification, the commission also adds a new subparagraph (J) to §23.133(d)(1) to conform to the statutory definition of BLTS.

The commission declines TCG's suggestion to insert "shall" in the introductory language of the list of criteria. The commission finds it redundant to modify the language so that the criteria are mandatory because LECs are required to provide the services listed in §23.133(d)(1)(E) as part of the criteria for designation as ETPs listed in §23.147(d)(1)(B).

Section 23.133(e) establishes the criteria for determining the amount of support an ETP can receive under THCUSP. Section 23.133(e)(1)(B) establishes residential and business revenue benchmarks using statewide average revenues per line. The commission invited comment on whether a revenue benchmark should be used to calculate the level of support ETPs will receive for serving rural and high cost areas under §23.133.

AT & T, CU, TCG, OPC, TTA, SWBT, and Sprint all supported the use of a revenue benchmark. Some parties suggested modification to the proposed rules. GTE recommended use of company- specific rates. MCI recommended that the commission should determine the benchmark during the compliance proceeding.

AT & T argued that the benchmark must include the appropriate access revenue that would include any contribution above the cost of access. AT & T claimed that otherwise, interexchange carriers (IXCs) will be double-paying for universal service; first through access rates that still contain an implicit subsidy; and second through the USF assessment itself.

CU commented that the calculation of residential revenues per line appeared to ignore the revenue generated by ELCS surcharges, which, because they are revenues generated by the access lines, should be included. CU noted that the phrase "reasonable portion of toll and access services" was undefined. CU recommended re-writing the rule to ensure that revenues from toll and access that are associated with the local loop in the cost model are included in the revenue calculation in the same proportion. CU asserted that, if toll and access are adjusted, ELCS surcharges should be similarly recalculated.

SWBT responded to CU's assertion in its reply comments, indicating that ELCS surcharges are included in its local service revenue. SWBT stated that CU's argument that the plan fails to take into account ELCS surcharges is simply wrong. SWBT contended that there is no statutory authority for the argument that ELCS surcharges should be recalculated based on any reductions made to access and intraLATA toll rates. SWBT argued that PURA §55.048 has no provision for recalculation of the charges under any circumstances.

CU alleged that if all sources of revenue are not taken into consideration, the LECs will be earning excess profit. In its reply comments, SWBT opined that CU's argument about excess profits is a red herring. SWBT argued that participation in the universal service plan should be revenue neutral, but only at the inception of the plan. SWBT explained that the plan does not guarantee continued revenue streams in the face of competition and that if CLECs acquire more and more customers in high cost areas, ILECs will lose the universal service contribution attributable to those customers, and the new entrant will receive them.

In its reply comments, TCG strongly supported the commission's recommendation to calculate the subsidy requirement as the difference between the total revenue per line and the forward-looking cost of those services, rather than the difference between basic service rates and the cost of basic service. TCG argued that this approach recognizes the fact that telephone subscribers buy more than basic service and the subscriber line charge (SLC). TCG contended that any shortfall due to basic service rates, not covering the basic service cost (forward-looking or otherwise), may be erased by the sale of discretionary services. TCG opined that the basic service rates are a device to gain customers for other more profitable products and services. TCG argued that the revenue from discretionary services should be included in the benchmark for determining

the support requirement. TCG remarked that a windfall would be prevented because the benchmark would take into account discretionary service revenue that would lead to a smaller universal service fund. TCG reasoned that cost-based rates will result from competition among local service providers for the entire package of discretionary services.

OPC emphasized that all sources of revenue, including enhanced services, be considered in establishing the amount an ETP may draw from the TUSF. OPC argued that the cross-subsidy and joint cost language of 47 U.S.C. 254(k) recognizes two distinct steps that are necessary to have fair and efficient pricing in the emerging, competitive environment - a strict prohibition on below-cost pricing and a reasonable recovery of joint and common costs across services that share facilities. OPC opined that arguments that try to ignore the fact that the loop is a joint and common facility used by many services are wrong on the economics, wrong on the judicial interpretation and wrong on the meaning of the new law. OPC stated that those who argue for allocation of the loop to basic service assert that the consumer's decision to buy local services causes the loop cost. OPC explained that a customer's intent could not be determined because customers may just as well think they are getting local, long distance and vertical services when they buy telephone service. OPC opined that assigning costs on the basis of a guess about the intention of ratepayers when they make a purchase is not a sound basis for economic analysis. OPC reasoned that a sound basis is to analyze the facilities and functionalities necessary and actually used in the production of goods and services. As an example, OPC stated that in order to produce a long distance call, one needs distribution plant, as well as switching plant and transportation. OPC explained that services that use facilities should be considered to cause or benefit from the deployment of those facilities. OPC also explained that every service that uses a facility should help pay for it and that costs for joint and common facilities should be recovered on the basis of the nature and quality of use that each service makes of those facilities. OPC argued that efforts to set the threshold on the basis of basic service revenues will create an extremely large state USF and is contrary to the approach being taken by the FCC. OPC explained that proposals that fail to take other revenues into account in estimating the extent of support needed unnecessarily shift costs onto basic service. OPC concluded that such an approach would result in a USF that would be far larger than needed and/or the cost of basic service will be higher than necessary.

In its reply comments, GTE disagreed with OPC's identification of the problem involved with setting the revenue benchmark as one of cost allocation. GTE strongly disagreed that the loop is a common cost that must be allocated to all services, but noted that adding toll and access to a revenue benchmark does not even accomplish this unwarranted goal. GTE argued that the inflation of the benchmark simply serves to minimize the level of explicit supports and cause the carrier to continue to bear negative margins on its basic services, as well as maintain implicit supports in its other revenue streams. GTE restated that its local residential service is currently priced at a level that results in a loss of approximately $310 million annually, and that local business services lose over $33 million annually. GTE argued that only a revenue benchmark that generates a funding level that makes these subsidies explicit will approach the sufficiency requirement of FTA §254(b)(5). GTE indicated that OPC's "misdirected fear" of under-contribution from other revenues towards the costs of the loop could never materialize. GTE commented that under-contribution could only occur if the revenue benchmark was set excessively low. GTE also remarked that an excessively high revenue benchmark will result in an unlawful suppression of the TUSF by failing to make all supports explicit. In addition, GTE recommended that the revenue benchmark be reviewed more frequently than every three years. GTE concluded that an expedited review process is crucial if toll and access are included in the benchmark as the universal service reductions must be rolled into the calculation to compute universal service support.

GTE opposed the use of "arbitrarily selected" statewide average revenues to calculate the benchmark to which costs will be compared to determine the per-line universal service support. GTE argued that the inclusion of discretionary services and a reasonable portion of toll and access services in a revenue benchmark runs counter to the goals of universal service.

In its reply comments, OPC indicated that the proposed rule makes it clear that the commission understands that revenues and costs must be matched. OPC stated that by including "reasonable share of revenues" the commission has clearly recognized that the costs and revenues must be analyzed. OPC indicated that the matching of costs and revenues could be accomplished in one of two ways under the proposed rule: (1) the commission may conclude that it is necessary to pull incremental costs of the other services into the universal service analysis as well as into the other cost proceedings that it is undertaking; and (2) the commission may decide that it is necessary to leave a reasonable share of revenues from other services out of the universal service analysis to cover costs left out of the universal service analysis. In either event, OPC concluded the commission will have avoided the mistake of mismatching that the companies erroneously accuse it of having made.

TTA advised the commission to adopt a revenue benchmark consisting of all of the non- optional charges that an ILEC's customer pays when subscribing to BLTS. TTA suggested that the benchmark equal the sum of the applicable flat rate for local service, the non-optional charges for extended area service (EAS) and expanded local calling service (ELCS), any separate touch call charges, and the applicable interstate SLC. TTA asserted that an interim THCUSP mechanism should be implemented to support the difference between the actual tariffed rate and the statewide average revenue benchmark. TTA reasoned that the interim mechanism would terminate once all regulated BLTS rates are allowed to equal the average revenue benchmark. TTA concluded that this interim plan would ensure that adequate THCUSP support would be available to any ETP serving a rural or high cost area of the State.

TTA also argued that the revenue benchmark proposed in the rule is a continuation of the implicit support mechanisms embedded in the ILECs' rates. TTA opined that including toll and access revenues in the revenue benchmark would not be appropriate in a competitive marketplace because an ETP can not rely on the access and toll revenues generated from customers in one area to support its cost of providing BLTS to customers residing in another area. TTA asserted that as markets become more and more competitive, similar problems will occur with inclusion of discretionary services in the benchmark. TTA further argued that the proposed revenue benchmark fails to meet the FTA objectives to provide specific, predictable, and efficient support for universal service.

TTA recommended amending §23.133(e)(1)(B)(i) and (ii) by deleting the phrase "as well as a reasonable portion of toll and access services." Alternatively, TTA suggested that the commission amend the rule to (1) clarify that interstate toll and access revenues are excluded; (2) require recalculation of the benchmark every six months; and (3) ensure that the benchmark is established after the toll and access rate reductions associated with the USF. Additionally, TTA recommended that if the benchmark includes toll and access revenues then the commission should simultaneously adopt an order increasing all interconnection rates, unbundled loop rates and resold loop rates by an amount equivalent to the subsidy included in the benchmark.

SWBT argued that the commission should use a revenue benchmark to calculate the level of support, but indicated that the most appropriate revenue benchmark would be the statewide average residential rate (estimated by SWBT to be $13.50 for all ILECs in Texas). SWBT indicated that a $13.50 benchmark would result in $1.090 billion in support for SWBT and $1.798 billion in support for the industry. SWBT indicated that it would agree to a smaller fund based on a revenue benchmark that would at least identify and deal with the implicit support contained in access and intraLATA toll rates. SWBT opined that such a revenue benchmark would include average residential/business end user common line (EUCL) and vertical services revenue. SWBT estimated these to be $23.58 for residence and $38.78 for business. These benchmarks would result in $482 million in support for SWBT and $983 million in support for the industry. SWBT asserted that access and toll revenues should not be included in the benchmark.

In its reply comments, AT & T found TTA's and SWBT's arguments for the exclusion of discretionary, toll, and access services in the calculation of the revenue benchmark to be flawed. AT & T explained that the only instance when such a rule would be appropriate would be when the retail prices for those services were simultaneously brought to cost, so no subsidy would exist in those rates. AT & T stated that this would not be possible absent a complete rate restructuring case, which could not be completed before the commencement of the TUSF. AT & T also opposed a dual standard, as proposed by TTA, because this would cause an unquantified increase of the TUSF with no concrete proposal on timing or phase-out of such a plan.

In its reply comments OPC opined that the ILECs had gone to great lengths to argue that there is a federal mandate for rate rebalancing or for the creation of a massive universal service fund. OPC argued that SWBT's proposal violates the conditions of the FTA because the same facilities are necessary for providing basic service and to complete a toll call: loop, transport, and switching. OPC indicated that IXCs have kept up their efforts to get a free ride on the loop by increasing the cost burden placed on basic service. OPC stated that MCI's creative use of FTA §254(k) would be much more credible if it did not immediately contradict that section by seeking to allocate 100% of common loop costs to basic service, thereby violating the cost allocation safeguards. OPC further argued that because of the misallocation of loop costs, the estimates of universal service funding requirements presented by GTE and SWBT involve a gross overestimation of the size of the fund. OPC concluded that because other services use common facilities, the charge for those facilities is not a subsidy, it is a recovery of costs. OPC declared that the claim that this violates the law is baseless.

Sprint opined that since basic services do not include toll and access services, their inclusion in the benchmark would not be consistent with the purpose of the fund. Sprint reiterated its position in its reply comments. Sprint objected to including any portion of toll and access services in the revenue benchmark calculation. Sprint argued that the inclusion of a "reasonable portion" of toll and access services would only result in a continuation of an implicit subsidy mechanism that is not sustainable in a competitive marketplace and clearly contrary to the FTA.

Sprint recommended that the revenue benchmark be set at the national average urban rate for basic local service including surcharges and taxes, SLC and touch-tone. Sprint also argued that ILECs with local rates below the national urban rate ($20 by Sprint estimates) be allowed to transition to this benchmark over time.

TTA indicated in its reply comments that if the Benchmark Cost Proxy Model (BCPM) cost model is used, Sprint's proposal of a revenue benchmark at the national average urban rate of $20 might be workable.

In its reply comments, SWBT discussed Sprint's recommended use of the national average revenue rate of $20. SWBT urged the commission to use Texas figures where available, as the adoption of universal service principles is for use in this state, not nationally.

GTE championed the comparison of company-specific costs to company-specific tariffed rates charged in each census block group (CBG). GTE argued that such a comparison would include the monthly recurring rate, SLC, and any other mandatory charge such as non-optional EAS. GTE objected to the inclusion of revenues from toll, access and vertical services in the statewide average benchmark. However, as long as the rules include toll, access, and vertical service revenues in the benchmark, GTE agreed that it is necessary to include these costs.

In its reply comments, GTE restated its opinion that in order to work properly, the revenue benchmark must include only those rates or revenues that are currently subsidized. GTE cited TTA's enumeration of practical problems caused by the inclusion of toll and access revenues in the benchmark. GTE opined that the inclusion would require an increase to wholesale rates so that alternatives to toll and access contribute an equivalent subsidy. GTE asserted that an insufficient fund will continue the current disparity between interstate and intrastate long-distance rates. GTE argued that the inclusion is anti-competitive as other toll and access providers will support only the net of universal service cost less the "reasonable portion of toll and access" while the ILEC must support the entire cost structure.

In response to GTE's comment that support flows from other services cannot be sustained in a competitive environment, especially when competitors can buy UNEs from the ILECs at cost-based rates, OPC stated that claims that the costs cannot be recovered are incorrect. OPC opined that the price for those services must reflect those costs and recovery of legitimate joint and common costs will not be competed away. To the extent that competitors are more efficient and provide these joint and common facilities at lower costs, the cost of service will decline. OPC continued that the claim that these costs cannot be figured into the estimation of the universal service fund on economic grounds is undermined, once the fact that they are joint and common costs is recognized. OPC argued that since they must be incurred by all who provide the services, they must be included in the final price of the service. OPC stated

that allowing incumbents to recover joint and common costs excessively from basic service would not promote efficiency and would frustrate competition, allowing incumbents to price more competitive services at an artificially low level.

OPC argued that advocates of recovering all loop costs from basic local service often apply inconsistent cost recovery principles, confusing the question of fixed versus variable cost recovery with the question of the recovery of joint and common costs. The fact that loop costs are more fixed and that switching costs are more variable should not dictate whether or not joint costs are recovered from the services that use a facility. OPC opined that this confuses the issue of who should pay with the separate question of how they should pay and that it may be just as efficient to recover the costs through a fixed IXC charge as a fixed end user charge. OPC claimed that the incumbents continue to confuse the question of fixed versus variable recovery of costs with the question of joint costs. OPC stated that GTE's complaint is about variable charges recovering fixed costs, not whether joint and common costs should be recovered. The solution is a careful analysis of what costs and revenue opportunities are fixed and which are variable and a fixed recovery of fixed joint and common costs. OPC opined that there are significant questions about the "fixed" nature of the loop cost, especially if cost causation is taken into account. OPC concluded that the costs of the loop vary with respect to the services for which it will be used and that while the costs may be fixed once the technology is deployed, the revenue opportunity is variable.

MCI cautioned the commission not to commit to any benchmark calculation until the cost results by CBG had been determined. In its reply comments, MCI suggested that the determination of the proper benchmark and the access/toll split be decided in a contested proceeding because these are fact-specific issues.

The commission notes CU's concern regarding ILECs and will strive to create a fund of the appropriate size. The commission shall establish benchmarks that will include revenues from basic and discretionary services, and a reasonable portion of access and toll revenues. The commission notes OPC's cost allocation arguments and declines TTA, Sprint, and GTE's suggestion to exclude toll and access revenues from the benchmark. By including revenues from discretionary services and a reasonable portion of access and toll revenue, the commission acknowledges that part of the costs of providing BLTS are recovered through the provision of non-basic services. This is consistent with historical rate design principles. The commission also recognizes that toll and access service provide contribution to support loop costs. The commission rejects CU's suggestion to define in this rulemaking proceeding what constitutes a "reasonable portion of toll and access" because the commission will establish that amount during the compliance proceeding. The commission recognizes that its actions in this rulemaking and related federal actions may impact toll and access revenues. The commission intends to reflect such action in its decision regarding the reasonable amounts of toll and access included in the benchmark.

The commission declines to adopt the alternative benchmarks proposed by Sprint, SWBT, GTE, and TTA. None of these alternatives would be competitively neutral while at the same time recognizing the revenues received by Texas LECs. Since the commission will select a forward- looking economic cost methodology that will accommodate Texas-specific inputs, as determined by the commission, to estimate the cost of providing BLTS in Texas, Sprint's proposal to use a national average rate is simply inappropriate for the TUSF. SWBT's proposal to use the statewide average residential rate ignores revenues generated by vertical services, and would seemingly place the entire cost burden of the loop and local switch on basic service. GTE's recommended use of company- specific tariffed rates would result in a benchmark that is not competitively neutral because payments to CLECs would be based on ILEC rates. TTA asserted that the benchmark should only include revenues associated with basic services and non-optional charges such as ELCS, EAS and SLC. Using TTA's benchmark would place the full burden of the loop and switch cost on those services.

The commission declines TTA's suggestion to implement an interim THCUSP mechanism to support the difference between the actual tariffed rate and the statewide average revenue benchmark. THCUSP support is designed to aid ETPs in keeping rates for BLTS reasonable. The commission has concluded that an ETP's need for support will be determined by the difference between the forward looking economic cost of serving a specific high cost area and the statewide average benchmark. If an ILEC determines that this support is inadequate, an ILEC may request additional support from the TUSF pursuant to §23.136 and §23.138. ILECs that have not elected to regulation under PURA Chapters 58 or 59 may also file rate cases to increase rates.

The commission also declines to adopt TTA's suggestion that interconnection rates, unbundled loop rates, and resold loop rates be increased by the amount equivalent to the subsidy included in the benchmark. The commission finds that providers of local exchange service using interconnection, UNEs and resale will be contributing to the overall cost of service. UNEs purchasers in particular are bearing the full cost of the loop, switch, and transport elements that they buy. Therefore if the commission raised those rates, the ILECs would be over-recovering their costs. Further, the interconnection rates were not set in this proceeding and are applicable to specific agreements between ILECs and CLECs. The commission concludes that it is inappropriate to address those rates in this broader rulemaking proceeding.

The commission declines to implement TTA and GTE's suggestion to modify the rule so that the benchmark is recalculated more frequently because §23.133(g) and §23.150(g) provide for sufficient review of the TUSF. Pursuant to subsection (g) the commission shall review the THCUSP within 90 days of the FCC's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas. Pursuant to §23.150(f)(2)(B), the TUSF administrator shall determine, on a periodic basis approved by the commission, the amount needed to fund the TUSF. The commission makes no revisions to §23.133(e)(1)(B) based upon the parties' comments.

Sprint stated that it is unclear if the statewide average is on an ETP by ETP basis, resulting in a unique revenue benchmark for each LEC, or whether there is one revenue benchmark for the entire state that will be used by all ETPs. Sprint argued that if there is a statewide benchmark that is to be used by all LECs then those companies with revenues above the benchmark should only be able to receive support based on the difference in cost and their own particular revenue amount. Sprint continued that LECs that have revenues below the benchmark should be allowed to raise their rates to the revenue benchmark amount. Sprint concluded that if this solution is not acceptable, then

the revenue benchmark should be calculated on a statewide, company-specific level.

The commission declines Sprint's suggestion to use a benchmark calculated on a company- specific basis. The commission clarifies that it will establish one statewide residential benchmark and one statewide business benchmark based on the statewide average revenues of all the ETPs seeking support from the THCUSP. The commission concludes that use of statewide benchmarks, rather than use of company-specific benchmarks, will create a more predictable fund size and make support payments more uniform across the state. The commission also notes that one statewide residential benchmark and one statewide business benchmark will make the fund less complicated to administer. While the benchmark remains the same for all ETPs, the amount of support received for eligible lines may vary because of the differing forward-looking costs calculated for the geographic areas in which the ETPs provide service. The commission notes that ILECs that have elected to regulation under PURA Chapters 58 or 59 are operating under a rate cap and cannot raise the rates for BLTS until the end of the election period. Non-electing ILECs may file rate cases to raise rates for BLTS.

Section 23.133(e)(1)(B)(ii) contained the calculation for the statewide business revenue benchmark.

The commission modifies §23.133(e)(1)(B)(ii) to clarify that only single-line business lines will be included in the calculation.

Section 23.133(e)(1)(C) stated that support under the THCUSP is portable with the consumer.

The commission modifies §23.133(e)(1)(C) to clarify that an ETP shall only receive support for residential lines and the first five single-line business lines at a business customer's premises that the ETP is serving over eligible lines.

Proposed §23.133(e)(2)(A) stated that the commission would use the BCPM to determine the per-line cost, on a CBG basis, of providing supported services. The commission invited parties to comment on the use of the BCPM, as opposed to the Hatfield Model (HM), to calculate the cost of providing universal service under proposed §23.133. The parties discussed various issues generally related to the use of cost proxy models and specific aspects of the BCPM and HM models.

GTE, SWBT, and TTA advocated using actual costs instead of a cost proxy model. GTE detailed its entitlement to recover all its costs including forward looking costs, the costs incurred to support universal service. GTE proposed that universal service support be made explicit through a calculation that compares an estimate of the price the market would set for basic local service in a particular CBG with the tariffed rate in that CBG. GTE presented information showing the amount of implicit intrastate and interstate universal service support embedded in its current rates. GTE asserted that all of this implicit support should be made explicit and recovered through the TUSF. GTE indicated its intent to seek an interim universal service support surcharge to preserve the existing universal support levels because the commission requires GTE to provide UNEs or allow CLECs to engage in facilities-based competition prior to the adoption of a sufficient and explicit universal service mechanism.

GTE also argued that it is inappropriate for the commission to use a single statewide model or "one size fits all" approach. GTE indicated that the commission should not adopt either BCPM or the HM, but use company-specific studies or models that aggregate the results consistently across the state. GTE further argued that its own cost model, the Integrated Cost Model (ICM), best reflects its network architecture and service area characteristics and therefore should ultimately be used to establish GTE's cost of providing universal service.

GTE continued its discussion in its reply comments, outlining three fundamental issues that any universal service plan must address. First, GTE stated, ILECs have historically been mandated to increase rates for non-basic services such as toll, discretionary and various business offerings to offset below-cost provisioning of basic services statewide. Second, GTE noted, ILECs provide basic service to some customers in high density areas at rates higher than the cost of providing the services. GTE illustrated that it suffers a shortfall that cannot be recovered because statewide averaging of revenues leaves the support provided by "above-cost basic" service customers understated. GTE argued that only by deaveraging revenues as it has deaveraged costs can the commission make the "above-cost basic" support explicit. Third, GTE commented, there is a disparity in basic and non-basic rates between various ILECs. GTE argued that companies whose customers provide greater than average revenue per customer will benefit in comparison to those companies whose customers provide less than average revenue. GTE stated that if revenues are averaged between companies, the companies with lower basic revenues and thus higher non-basic support requirements, will receive insufficient funds to make all their support explicit. GTE asserted that companies with higher basic charges and lower non-basic supports receive even greater funds than needed to make all supports explicit and that this result of inter-company averaging would be unfair and inconsistent with the FTA. GTE stated that the plan is clearly deficient in addressing the three problems it outlined and that the simple solution is to compare each company's cost to provide basic service to its tariffed basic rates for each company.

MCI supported GTE's request for the commission to reduce access charges to cost-based, market rates. MCI defended this statement by highlighting that artificially high access charges skew the market through improper pricing signals. MCI argued that the commission should reject GTE's request for an interim universal service surcharge because it will only increase GTE's already "exorbitant" returns. MCI said the commission should reject GTE's suggestion to base UNE prices on actual costs because it is inconsistent with the FTA, FCC regulations and commission arbitration decisions. Furthermore, MCI averred that this rulemaking is not the proper forum to address this issue. MCI stated that the commission should reject GTE's suggestion to compare company-specific costs with company-specific rates by CBG because to do so would not guarantee comparable rates between high cost areas and urban areas.

SWBT and TTA also stated that actual costs of providing local exchange service should be used for the purpose of calculating the cost of universal service funding. TTA remarked that these book costs would provide the basis needed to enable the commission to identify and remove implicit support from the ILECs' current rates, as required by the FTA. In its reply comments, MCI stated that the commission should reject SWBT's suggestion to use actual costs for the same reasons it should reject GTE's embedded cost argument.

In its reply comments, OPC discussed ILEC recovery of embedded costs. OPC stated that ILECs' claims that all of their costs and revenues must be replaced at embedded historical levels

with no questions asked is an erroneous argument. OPC opined that this claim permeates the analysis both in the question of how to model costs and in the not-so-veiled threat of future court cases regarding stranded costs and constitutional taking. OPC argued that utilities have always been under an obligation to provide economic service and they have never been legally authorized to recover costs associated with inefficiencies, excess profits, or strategic investments. OPC asserted that the language in FTA that allows companies to recover their "costs" is not a blank check to claim guaranteed recovery of all costs that the companies incur, since the requirement that rates be just and reasonable still holds. OPC speculated that the growth of competition may only make the uneconomic nature of delivery of service obvious and palpable; it does not create the fundamental obligations of utilities. OPC stated that the fact that the commission approved some rates years ago does not mean that those rates were not reviewable. OPC contended that the fact that the commission (or the legislature) invokes competition as a more precise regulatory mechanism for determining what is economic, does not change or create the requirement that the utility provide economic service - that obligation has always been at the heart of traditional regulation. OPC contended that in a competitive market, investments that made sense at one time are frequently rendered uneconomic by technological progress or market change. Just because the investments made sense at one time does not ensure their soundness over time. OPC asserted that the claim for stranded cost recovery has no basis in the FTA.

The commission declines to adopt the recommendations of GTE, SWBT and TTA to use embedded or actual costs to determine the level of THCUSP support. Use of embedded costs to determine the level of THCUSP support would reflect the cost structure of a specific ILEC and therefore would not be competitively neutral. The commission concludes that it would be poor policy to base support payments for THCUSP on the costs of an ILEC because an ILEC has a completely different physical network and financial structure from CLECs. Use of a forward- looking cost methodology is the best manner for the commission to ensure competitive neutrality when calculating THCUSP support. Through the compliance proceeding the commission and the parties will be able to openly examine, debate, and resolve costing issues. Use of a forward looking cost methodology will also allow for targeting of support to small geographic areas. The commission is confident that specific geographic targeting will create a smaller, more effective fund that provides support only where it is necessary. The commission notes that a final order was issued in SWBT's last rate case, Docket No. 8585, on November 29, 1990. The commission issued a final order in GTE's last rate case, Docket No. 5610, on February 23, 1989. If the commission were to use embedded costs, it is the commission's opinion that these two companies would need to file a rate case in order to develop up-to-date embedded cost information.

GTE suggested that under PURA and the U.S. and Texas Constitutions it was entitled to recover stranded historical costs. While recognizing that the focus of this proceeding centers around a determination of the cost of universal service, GTE encouraged the commission to consider the role of the TUSF as it relates to setting prices for all of GTE's offerings, including retail services, unbundled network elements, and resold services. GTE stated that the commission's policy decisions regarding the TUSF would affect the level of ILEC stranded costs, but did not recommend that these costs be recovered through the TUSF. GTE also alleged that an unconstitutional taking of an ILEC's property may occur if a methodology other than an ILEC's actual costs were used to determine the cost of providing basic local telecommunications service. In support of its position, GTE cited *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), and *Tenoco Oil Co. V. Department of Consumer Affs.*, 876 F.2d 1013 (1st Cir. 1989), for the proposition that utility rates must provide not only for a company's cost, but also for a fair return on investment. GTE also noted that the Eighth Circuit decision in *Iowa Utilities Board*, 1997 U.S. App. LEXIS 18183, recognized that compensatory prices were required in order to avoid a taking.

MCI objected to GTE's argument that it is legally entitled to recover all of its embedded costs. MCI argued that GTE gave up its entitlement to recover stranded costs when it elected into incentive regulation under PURA Chapter 58.

The commission disagrees with the arguments presented by GTE. The use of a forward looking cost methodology to determine the cost of providing basic local telecommunications service will not result in a taking of private property in contravention of the Fifth and Fourteenth Amendments.

The Supreme Court decisions applying the Takings Clause to public utility ratemaking do not support GTE's contention that regulators must consider historical costs in setting utility rates. See *FPC,* 417 U.S. at 390-90 (acknowledging permissibility of multiple methods of calculating rate structures) and *Duquesne,* 488 U.S. at 316 ("The adoption of a single theory of valuation as a constitutional requirement would be inconsistent with the view of the Constitution this Court has taken since Hope Natural Gas ...."). Rather, the decisions cited by GTE require only that rates not be set at "confiscatory" levels, meaning that regulators must permit utilities to earn a rate of return on their investments that is commensurate with returns on investments in other enterprises having corresponding risks. See *FPC* and *Duquesne.* On this basis, the commission concludes that GTE's argument is without merit and declines to adopt the position that use of a costing standard which adopts a forward-looking rather than historical standard for cost determination violates the Takings Clause.

With regard to GTE's entitlement argument, the commission concludes that confiscation case law supports a position that public utilities, including LECs, are not guaranteed the right to recover the full historical costs of their investments. *Los Angeles Dep't of Airports v. United States Dep't of Transp.,* 103 F.3d 1027, 1034 (D.C. Cir. 1997)(stating that computing actual cost does not always require using historical cost) and *Illinois Bell Tel. Co. v. F.C.C.,* 988 F.2d 1254, 1262 (D.C. Cir. 1993)(noting that "FCC has no obligation ... to include in the rate base all actual costs for investments"). Moreover, neither PURA nor the FTA provide any textual basis for establishing an unmistakable right to recover all prudent historical costs. Rather, these statutes speak in much broader generalities about the right to "just and reasonable rates." PURA §53.003. As state and federal regulators continue to transition from traditional rate of return methods for setting maximum rates toward incentive regulations in the form of price caps, GTE's entitlement argument is further diminished. GTE has elected to be subject to incentive regulation under PURA Chapter 58. Under the terms of these provisions, an electing utility's rates, revenues, income, or return on investment are not subject to commission review. Prior to electing incentive

regulation, GTE's rates were set using a historical rate of return methodology. This methodology determines rates based on a utility's actual costs. The telecommunications industry is a declining cost industry. For this reason, GTE will experience an increased rate of return on its investments during the period of incentive regulation. This factor, when coupled with the dollar for dollar recovery through the TUSF of any rate reductions that may occur upon implementation of the fund, suggests that GTE will fully recovery the costs associated with its provision of basic local telecommunications service. Consequently, the commission concludes that GTE's critique of the forward looking cost methodology is unjustified; GTE is fully recovering its historical costs through its current rates and to the extent that rate reductions occur upon implementation of the TUSF, these reductions will be recovered from the TUSF. These mechanisms ensure the recovery of an ILEC's historical investment. Therefore, the only practical effect of utilizing a forward looking cost methodology is to create an explicit cost recovery mechanism for universal service funding and remove implicit support for universal service.

In the event that the forward looking cost methodology does not accurately determine the appropriate cost recovery for LECs that have not elected into incentive regulation under PURA Chapter 58 and 59, the commission has established a mechanism through which carriers may obtain compensation for regulatory actions that result in an alleged taking. Specifically, §23.138, relating to Additional Financial Assistance (AFA), enables ILECs that are not regulated under PURA Chapter 58 and 59 and that need funds in addition to those received under §§23.133, 23.134, or 23.136, to request AFA support in PURA §§53.105, 53.151, or 53.306 proceedings.

Although the commission has considered GTE's concerns regarding the universal service plan, the commission notes that the goal of this rulemaking is specific to establishing a universal service fund for Texas and cannot address the rate issues raised by GTE. As a company electing regulation under Chapter 58, GTE must maintain a rate cap for basic services until the end of the election period. GTE may raise rates for discretionary and competitive services pursuant to the provisions of PURA Chapter 58. The commission acknowledges that revenues from non-basic services contribute to the cost of providing basic services. The commission notes GTE's concerns about the disparity in basic and non-basic rates between various ILECs, but, GTE's complaints cannot be addressed in this rulemaking because those rates were set in separate proceedings. The commission will establish benchmarks and calculate forward-looking economic costs for specific geographic areas that minimize the possibility of ETPs receiving greater support than is needed to make all supports explicit.

AT & T and MCI argued in support of the HM, recommending that the commission reject the BCPM. AT & T stated its belief that the HM is the superior model based on construction of the model itself, ease of modifying inputs, and accuracy of data. AT & T alleged that the HM meets the ten criteria required by the FCC for any cost study used to calculate federal universal service fund (FUSF) support.

MCI strongly urged the rejection of the BCPM. MCI indicated that the commission should reserve its decision regarding selection of a benchmark until the FCC has reviewed the cost model/study submissions. In its reply comments, MCI indicated that the commission should defer to the FCC's choice of a cost model. TCG also suggested that the commission delay choosing a cost model until the FCC has completed its investigation of proxy models. In its reply comments, TTA indicated that whatever the model chosen, its adoption should not be delayed, as MCI proposed, and it should reflect Texas-specific costs, such as ELCS, not mirror a federal cost model.

In its reply comments, GTE indicated that MCI erred in urging the commission to reject BCPM for state purposes if the FCC rejects it for federal support purposes. GTE argued that since the commission has made the election to submit its own cost models for the purpose of calculating intrastate support, it need not wait on any further action by the FCC. GTE stated that even if the FCC adopts a different model, that FCC model will not be used for either interstate or intrastate purposes in Texas in light of this commission's election. GTE further argued that the FCC's general model will be used in those instances where the state fails to present its own model or its model is found to be deficient. GTE remarked that under these circumstances the commission would then be free to proceed with its own model for intrastate purposes. GTE opined that the commission must choose the most appropriate costing model for Texas regardless of the ultimate decision of the FCC as regards its general model.

In its reply comments, SWBT stated that under no circumstances should the commission adopt use of the HM simply because the FCC may adopt the HM. In response to AT & T's argument that it is critical that the commission use a model that is consistent among jurisdictions for the application of the state federal universal funding mechanism, SWBT stated that while consistency is a worthy goal, it should not outweigh the commission's obligation to ensure adequate universal service support in Texas. SWBT stated that jurisdictional differences in costs which result in differing levels of USF's federal and state can be accommodated simply by crediting the LEC's state USF recovery by the net FUSF recovery.

In its reply comments, GTE stated that the HM is erroneous and riddled with conceptual flaws that render it unacceptable. GTE opined that the HM models an incomplete and futuristic network that could not provide universal service at this time or in the foreseeable future. GTE remarked that apart from its conceptual and methodological shortcomings, the HM has been shown to be an untrustworthy, result-oriented device designed to produce artificially low costs and prices. GTE argued that the HM is more inaccurate in its measure of universal service cost than the BCPM and unfit for use in determining costs for USF under the FCC's ten cost model criteria. GTE argued that the HM should be rejected for several reasons: it builds a network that could exist only once the local exchange market becomes effectively competitive, something that may not occur in five or ten years; it produces network investment, general support investment, network expenses, support expenses, and corporate expenses that are only about 40% to 50% of current GTE costs; structure sharing assumptions won't be attainable for at least three to five years; it fails to include enough plant to serve customers because of unrealistic assumptions about customer locations; it does not produce accurate line counts; and it woefully underestimates switching costs.

GTE, SWBT, and TTA suggested that the commission use an embedded cost methodology, but indicated a preference for BCPM in the event that the commission decided to use a forward looking economic cost model. If the commission must select a cost model to calculate universal support on an interim basis, GTE opined that BCPM is superior to the HM. SWBT concurred with GTE that the BCPM takes a much more reasonable

approach to cost modeling than the HM. TTA also stated that BCPM is clearly the recommended choice, because it is based on a more reasonable approach to model construction, and employs more rational and reasonable assumptions throughout the process than HM. TTA attested that the BCPM is based on telecommunications engineering principles that would construct an operational network. TTA further recommended that Texas-specific input values be used in the BCPM in order to recognize the state's specific operating cost, geographic, demographic, and other characteristics. TTA advised that national average inputs should be used only in those instances where state specific values are not available.

Sprint argued that the commission should retain the BCPM as the model for use in Texas. Sprint observed that the BCPM is the most accurate, user-friendly and detailed model available. Sprint listed three key factors that allow the BCPM to provide superior and more accurate cost estimates than HM: (1) BCPM identifies which customers are served by which wire center; (2) BCPM locates customers in order to build the network; and (3) BCPM constructs a workable network. Sprint identified problems that the HM has with these three areas. Sprint noted that HM assigns all of the customers in a CBG to a single wire center, the problem is that many times, the customers in a CBG are served by several different wire centers. Sprint commented that HM uses clustering in CBGs with densities under 200 households per square mile, and assumes that 85% of the customers are located in towns on three-acre lots that are all adjacent to each other, although clustering is completely arbitrary and has no basis in reality. Sprint further commented that HM assumes that both CBGs and wire centers are square shaped, that the main feeders emanate from the wire center in either a north/south or east/west direction only and that sub-feeders split off at right angles and extend to individual CBGs. Sprint stated that no existing network is built this way, and no network that was actually constructed by an efficient provider would be built this way either. In its reply comments, Sprint restated its support of the BCPM and noted that SWBT, TTA, and GTE all recommended the BCPM if the commission chooses to use a forward-looking proxy cost model.

AT & T compared the HM and BCPM models in its reply comments and stated that Sprint advocated adopting a cost model (BCPM 2.0) which is untested and is still an unproven work in progress. In addition, in AT & T's opinion, many elements of BCPM 2.0 are invisible to the end users and would make it exceedingly difficult to determine the accuracy of the program's calculations. AT & T stated that the HM version 4.0 is open to public scrutiny by utilizing public data sources for its inputs. AT & T contended that all concerns expressed by Sprint about the HM have been addressed in HM version 5.0. In renewing its support for the HM, AT & T also said that regardless of which model is used, it is critical that proper and consistent inputs are established.

OPC opined that the BCPM remains fundamentally flawed, and does not, in its present state, produce reliable estimates of forward looking, efficient costs. OPC stated in its reply comments that the competitive model offered by the companies is one in which decisions on entry are made by taking only the revenues available on basic service into account. OPC declared that the incumbents seek to make basic service "profitable" on a stand alone basis, with 100% recovery of loop and other costs from basic services, while ignoring all of the revenues that can be earned on the sale of services that share the use of common facilities.

TEXALTEL did not state a preference for either model, but noted that if portability of the subsidy is done right, the level of the subsidy is somewhat self policing.

The commission agrees with MCI and TCG that it may be prudent to delay choosing a specific forward looking economic cost methodology since both BCPM and HM are undergoing revision. The updated versions of BCPM and HM provided in the next few months should address some of the specific concerns expressed by the parties. As part of the compliance proceeding, the commission will determine which forward looking economic cost methodology will be best for use in Texas and also determine the appropriate Texas-specific inputs. In that proceeding, the commission will consider the ten criteria specified in paragraph 250 of the Report and Order. The commission replaces the reference to BCPM in §23.133(e)(2)(A) with the term "forward-looking economic cost methodology."

TTA opined that a proxy cost model was not applicable to the small and rural ILECs, and should not be adopted for these companies.

The commission does not anticipate applying a forward looking economic cost methodology to determine TUSF support payments to any small or rural ILEC until the FCC adopts an order implementing new or amended FUSF rules for rural, insular, and high cost areas. At that time, as stated in §23.134(h), the commission shall initiate a project to investigate a mechanism by which ETPs receiving support pursuant to §23.134 would transition to receiving support pursuant to §23.133.

In proposed §23.133(e)(2)(A) the commission stated its intent to use the BCPM on no greater than a CBG level.

CU asserted that the CBG was too small a unit of analysis, and that it did not fairly represent the geographic deployment of network facilities or the areas used to market services. CU argued that use of CBGs would result in an overestimation of the need and a larger than necessary TUSF. Agreeing with CU, OPC recommended that the commission reconsider its choice of the CBG as the unit of analysis, and choose instead a larger unit such as the wire center or the exchange. OPC argued that the CBG does not represent a reasonable market segment for a new entrant, that the network architecture is not driven by the CBG, and that telecommunications services are not marketed at this level. OPC argued that using an excessively small unit of analysis like the CBG will create an unnecessarily large USF, since it eliminates the actual averaging of costs that inevitably goes on in a marketplace. Moreover, according to OPC, it will increase the role of joint and common costs since all costs outside the extremely small geographic area of the CBG must be considered joint and common between areas.

In its reply comments, SWBT declared that OPC showed a misunderstanding of the purpose of the rule when it argued that it is virtually impossible to deploy facilities, to advertise, and to offer service by CBGs. SWBT opined that CBGs are merely a mechanism for administering USF. SWBT argued that use of CBGs allows the identification in a model of high costs associated with actually deploying facilities in such a geographic area and allows the universal service mechanisms to encourage providers to actually bring competition to customers residing in rural high cost areas. SWBT stated that OPC's argument that the CBG analysis eliminates actual averaging of costs is

a benefit, not a detriment, of the TUSF plan. SWBT opined that use of CBGs does not reduce the economies of scale and scope.

In its reply comments, GTE responded to OPC and CU, contending that their positions that the CBG is too small a geographic area are wholly without merit. GTE argued that OPC's subjective criteria for choosing the appropriate geographic area for universal service calculations, facilities deployment, and marketing activities confirm that CBGs or smaller areas would be preferable to wire centers for calculating costs for universal service purposes. GTE refuted OPC's argument that CBGs do not represent reasonable market segmentation for new entrants by stating that current experience indicates that new entrants are targeting clusters of consumers smaller than CBGs. GTE also took issue with OPC's statement that an excessively small unit of analysis will create an unnecessarily large universal service fund. GTE stated that the aggregation of customers into CBGs could not of itself ever overstate the fund requirement. GTE remarked that aggregation by CBGs does not eliminate the averaging of costs that occurs in the marketplace. GTE further argued that in the case of artificially suppressed prices the amount of suppression can only be calculated by deaveraging costs, if possible, down to the customer level. GTE found OPC's argument that CBGs increase the role of joint and common costs to be without merit. GTE responded that joint and common costs by definition cannot be directly segregated between services or geographic areas. GTE stated that the use of CBGs, wire centers, or the entire service territory will not change the pool of joint and common costs that must be borne by services. GTE urged the commission to adopt CBGs or smaller geographical areas for purposes of calculating the universal service requirement.

TEXALTEL observed that a proxy model was inevitable. TEXALTEL stated that since SWBT and GTE do not keep cost records on a CBG or even an exchange basis there is no means to ascertain actual costs in small geographic areas. TEXALTEL stated that a proxy model that produces a reasonable approximation of forward looking costs for SWBT's or GTE's study area should be used to determine CBG costs. TEXALTEL strongly supported the concept that costs must be determined by small geographic areas; otherwise, totally unacceptable aberrations will occur. TEXALTEL contended that if geographic areas are too large, they will have the effect of averaging high cost and low cost consumers and that competitive providers will seek out those consumers with high subsidies and low costs and leave the carriers of last resort (COLRs) with the consumers whose costs are much higher than subsidies.

In its reply comments, OPC disputed the incumbents' claim that the commission must only look to basic service plus universal service support on a very granular level of entry (the CBG) in order to meet the dictates of the FTA. OPC contended that potential entrants recognize the availability of revenues from the broad range of services as part of the fundamental decision to enter. OPC argued that the ability to market and achieve margins on the services which actually require the enhanced functionality of the modern network is a much firmer basis on which to build competition. OPC concluded that a firm that planned entry at the level of only basic service could never compete.

TEXALTEL professed that as a group of access charge payers and potential competitors, it appears that the higher the rural subsidies are, the better off its members are. TEXALTEL remarked that as long as access charges are reduced by the amount of the subsidies net costs to IXCs would be a wash. TEXALTEL admitted that the higher the rural subsidies, the better the chances that its members would have of serving rural areas. TEXALTEL stated that it would be bad public policy for subsidies to create a false economy where firms are competing for subsidies, not consumers and revenues. TEXALTEL encouraged the commission to start the process conservatively and make adjustments later as experience is gained.

The commission supports using a forward looking economic cost methodology on small geographic areas for the determination of TUSF support. The commission concludes that the use of small geographic areas allows for determination of high cost areas with the least amount of averaging, leading to a more accurate determination of the support amount. The commission also concludes that averaging costs over small geographic areas will lessen the ability of ETPs to selectively target relatively higher revenue/lower cost customers and receive THCUSP support. It is the commission's opinion that such targeting in areas that have average costs above the benchmark could leave the ILEC serving the lower revenue/higher cost customers. As stated previously, the forward looking economic cost methodologies are undergoing review and the extent and effect of the model changes is unknown at this time. Therefore, the commission in order to have flexibility in selecting a forward looking economic cost methodology, qualifies its statement that CBGs will be the geographic area of analysis in §23.133(e)(2)(A) with the phrase "or any other geographic area determined appropriate by the commission." In selecting a forward looking economic cost methodology, the commission shall address the question of whether to use wire centers, CBGs, or some other geographic area to model Texas costs in the compliance proceeding.

SWBT indicated that it will seek to be an ETP for the CBGs or portions thereof in wire centers it serves in Texas. SWBT stated that this identification ensures that the current advertising by SWBT is sufficient to meet the requirement of the commission's universal service rules and the FTA. SWBT also indicated that establishing CBGs as the basis of the THCUSP is not a simple process. SWBT stated that it will be expensive and time consuming for ILECs to perform the mapping that the rule will require because current customers and exchanges are not mapped to CBGs. SWBT argued that the cost is not justified and an allocation procedure should be adopted. If manual development is required, SWBT argued that the rule should provide for recovery of costs associated with the process.

SWBT continued its argument in its reply comments, claiming that in order to receive support for a line, an ETP will need to identify the CBG in which the customer is located. SWBT also stated that the CBG is a geographic area that has previously been totally unrelated to local exchange telephone business and consequently does not exist in telephone company records. SWBT reported that 2.2 million lines in SWBT, GTE and Sprint records are not identified to a CBG by commercially available matching software. SWBT listed six limitations to its ability to identify the CBG of each line: (1) 198 Texas counties have not completed rural county addressing; (2) commercial databases will not be updated until the postal conversion of rural county addressing is complete; (3) standardized Census Topologically Integrated Geographic Encoding and Referencing (TIGER) street number, street name, and city or latitude and longitude may not be available; (4) billing addresses may be

different from served addresses; (5) with each new census, some CBGs will change their physical boundaries; and (6) LEC customer addresses must also match addresses used by the applicable E-911 agency. Considering these six limitations, SWBT argued that an allocation procedure is needed to assign the lines for which no CBG is identified. SWBT suggested that the procedure be based upon the identified lines by CBG compared to the BCPM projected lines within the CBG served by the ETP. SWBT asserted that to be eligible to utilize the allocation procedures, a LEC should be required to correctly identify at least 60% of the companies' TUSF eligible lines to a correct CBG. SWBT claimed that its allocation procedure appropriately spreads unidentified lines to the CBGs with the greatest deviation from the BCPM projected number of lines. SWBT recommended that the procedure be reviewed 18 months after implementation to determine any needed modifications.

In its reply comments, Sprint concurred with SWBT in its recommendation that ILECs should be able to recover the cost of mapping and identifying customers in a CBG. Sprint urged the commission to allow the recovery of reasonable expenses for implementation of TUSF on a CBG basis. Since the ILECs currently maintain the majority of the local exchange customer base, Sprint indicated that identifying customers into proper CBGs would best be accomplished by the ILECs. Sprint indicated its belief that if ILECs will be reimbursed for reasonable implementation costs that will be funded by other telecommunications providers, then other telecommunication providers must have access to customer CBG location information developed by the ILECs.

GTE also agreed with SWBT in its reply comments. GTE supported SWBT's comments regarding the difficulties of determining exact customer locations for purposes of populating CBGs. GTE urged the commission to adopt an allocation procedure to be implemented after a reasonable threshold of customers has been mapped. Alternatively, GTE supported SWBT's request for recovery from the fund for expenses incurred to fully map these customers.

The commission declines to make a decision at this time regarding the necessity of customer mapping and recovery of related costs through the TUSF. The commission notes that the ILECs do not currently maintain customer records on a CBG basis, but it is unclear how much, if any, mapping of actual customer locations by the ILECs will be necessary. The commission shall address these issues in the compliance proceeding. If, in that proceeding, the commission determines that customer mapping by ILECs is necessary, and that the ILECs should receive TUSF support for mapping customer locations, then all mapping information developed by the ILECs and paid for by the TUSF shall be made available to all ETPs.

Section 23.133(e)(3)(B) establishes the criteria to be considered in subsequent determinations in THCUSP base support.

SWBT indicated that it is unclear how growth patterns and income levels in low-density areas can be used for future determinations. SWBT stated that the intent of the language in §23.133(e)(3)(B) is unclear. SWBT opined that the actual relevant factors are the costs to provide the service and the revenues that can be expected to be obtained in these areas. TTA asserted that none of the criteria proposed in §23.133(e)(3)(B) that trigger future review of the benchmark and cost methodology were inputs to either the benchmark calculation or the cost methodology. TTA recommended replacing them with more appropriate triggers, such as the need to remove additional subsidies; changes in the federal cost methodology and benchmark; changes in the technology used in the cost model; changes in prices for inputs to the cost model; and changes in population centers or other demographics used in the cost model.

The commission declines to revise §23.133(e)(3)(B) as suggested by SWBT. These criteria will help determine whether the commission's TUSF plan is successful in achieving its USF goals. The commission notes TTA's triggers but also declines to replace the criteria with TTA's suggestions because the rules as drafted contain sufficient review provisions. Section 23.133(e)(3)(A)(ii) provides for commission review of the forward looking economic cost methodology, the benchmark levels, and/or the base support amount on its own motion at any time. Pursuant to §23.133(g) the commission shall initiate a project to review the THCUSP within 90 days of the FCC's adoption of an order implementing new or amended federal USF support rules fur rural, insular and high cost areas.

Section 23.133(e)(4) establishes the calculation of the amount of THCUSP support payments to individual ETPs.

Due to modifications made to §23.147(d)(2)(A)(i), the commission revises §23.133(e)(4)(A).

Section 23.133(e)(4)(B) provides for an adjustment to TUSF support payments for federal USF support.

MCI suggested that the commission should clarify the definition of the FUSF support offset in §23.133(e)(4)(B) or defer implementation of the THCUSP until January 1, 1999. TTA also recommended revising §23.133(e)(4)(B) to clarify that FUSF funds which are either targeted to specific programs such as Lifeline, Tel-Assistance, and education discounts, or provided as an offset to interstate costs, do not reduce the TUSF. In its reply comments, Sprint concurred with TTA. Sprint indicated its support of the reduction of TUSF support by the amount received from the FUSF. Sprint argued that since federal Lifeline and educational discount programs are in effect special discounts to services other than BLTS then it is appropriate not to reduce TUSF support by those amounts.

The commission clarifies that the THCUSP support will be decreased by the amount of federal high cost assistance received by the ETP and revises §23.133(e)(4)(B) to reflect that clarification.

Section 23.133(e)(4)(C) contains a provision for the sharing of THCUSP support payments between an ETP providing service using UNEs and the underlying carrier. The commission sought specific comment on three hypothetical examples: (a) If the forward looking economic cost ($80) is above the benchmark ($75), and the benchmark is above the sum of UNE prices ($60), how, if at all, should the support amount (the difference between the forward looking economic price and the benchmark) be divided? (b) If the forward looking economic cost ($90) is above the sum of UNE prices ($85), and the sum of UNE prices is above the benchmark ($75), how, if at all, should the support amount (the difference between the forward looking economic cost and the benchmark) be divided? (c) If the sum of UNE prices ($90) is above the forward looking economic cost ($80) and the forward looking economic cost is above the benchmark ($75), how, if at all, should the support amount (the difference between the forward looking economic cost and the benchmark) be divided?

AT & T, GTE, and SWBT provided specific responses to the three hypothetical examples in the question posed by the commission. In response to (a), AT & T indicated that the CLEC would receive $5.00, GTE and SWBT answered that the ILEC would receive $5.00; in response to (b), all three companies indicated that the ILEC would receive $5.00 and the CLEC would receive $10; in response to (c), AT & T indicated that the ILEC would receive $10 while GTE and SWBT postulated that the CLEC would receive $5.00.

AT & T suggested modifying §23.133(e)(4)(C) because it could be interpreted to mean that the forward-looking economic costs equal the sum of the UNE rates and the THCUSP. AT & T indicated that this was a potential problem since UNE costs may be different because they are developed through arbitrations or other proceedings on a statewide or zone basis. Another problem, according to AT & T, was that the rule could lead to discriminatory treatment between ILECs and CLECs. AT & T opined that if the USF cost was greater than UNE, the ILEC could still receive an additional subsidy. If the UNE was greater than USF cost, or a CLEC utilizes part of its facilities and has additional individual costs, AT & T speculated that then, the entrant was disadvantaged because there was no additional subsidy for it. AT & T proposed that the solution was to only evaluate the differential between USF cost and the benchmark price, and award the subsidy to the carrier providing the service to the customer. AT & T argued that only the carrier who wins the customer should get the support. AT & T declared that the carrier providing the underlying UNE should not get the subsidy because it will generally recover its costs if the UNEs are properly priced.

In its reply comments, SWBT asserted that AT & T was wrong in its argument that the rule results in discriminatory treatment between the ILECs and CLECs because no additional subsidy is provided to a CLEC in cases where that new entrant provides services using partly its own facilities and partly UNEs. SWBT responded that no adjustment needs to be made to recognize this situation because the CLEC can select the lowest cost means of providing the service, either through UNEs or its own facilities. SWBT advised the commission to reject AT & T's suggestion that all of the subsidy be awarded to the carrier that provides the service because this may result in a windfall to carriers such as AT & T that do not intend to build facilities. SWBT disagreed with AT & T's argument that an ILEC's receipt of the UNE price means that it is fully compensated. SWBT argued that it was not recovering its actual costs but rather a modified hypothetical cost of service because for USF purposes the benchmark cost was determined on a different basis than is true for UNEs for which the costs are determined at a much more aggregated level. SWBT argued that because of these differences the USF cost in an area will likely be higher than the UNE price and the ILEC will not be properly compensated if the average UNE price is all that it can receive. SWBT further argued that there is no cost or any other basis for giving AT & T or other CLECs the difference between the USF cost and the UNE price, since they are not incurring costs the support is designed to recover. SWBT stated that if the UNE price is below the USF area cost, the differential in the UNE price and the USF cost, if above the benchmark, should flow to the underlying facilities provider. SWBT stated that this arrangement of support sharing creates no barrier to entry because UNE purchasers will receive up to the UNE cost all the support above the benchmark and this will be on an equivalent footing with any other provider of local service in that area.

SWBT commented that the examples in the questions assume that the sum of UNE prices should be used to calculate the retail provider's cost. For that process to work, SWBT suggested that the TUSF administrator calculate the aggregate or sum of the UNE costs per line for each UNE provider in each universal service area, using the approved UNE rates and current quantities of the UNE provider's facilities in the USF area.

AT & T, GTE and SWBT observed that the three examples did not consider a situation in which the CLEC uses a combination of UNEs and its own facilities to provide service. AT & T urged that when a CLEC uses a combination of UNEs and its own facilities, the CLEC should receive the full subsidy because the ILEC will recover its costs via UNEs. AT & T indicated that the proposed provision should only be applied where UNEs are used exclusively to provide service.

GTE indicated that the rule must be expanded to address situations where only a portion of what is provisioned is supplied through the purchase of UNEs. GTE reiterated its concern that cost-based pricing may run counter to the goals of universal service and must be appropriately addressed in any universal service plan. GTE further asserted that whether or not a sharing mechanism was adopted, the entire support lost due to the purchasing of UNEs must be recovered.

SWBT also commented that the commission should recognize the combined use of owned facilities and purchase of UNEs to provide end to end service by the retail provider. SWBT proposed a method that the TUSF administrator could use to calculate the UNE purchasers' costs when providing service through a combination of its own facilities and UNEs. SWBT also indicated that the administrator must determine the amount of FUSF support received and deduct it from the state support provided to the eligible carrier. As an alternative to what SWBT referred to as a complex and burdensome process, SWBT recommended that none of the support be paid to the UNE-using provider and instead that all the support be provided to the underlying carrier providing the facility utilized to provide service to the customer. SWBT stated that this approach was practically and theoretically correct because the UNE-using provider will receive (in high cost areas) a rate that should be lower than the commission's model universal service area cost result. The UNE rate is developed based on and averaged across a much larger area that encompasses not only high cost, but also many lower cost areas.

In its reply comments, MCI suggested that the commission should reject SWBT's modifications to the UNE adjustment and SWBT's alternative proposal for the ILEC to receive all of the TUSF support to avoid administrative complexity and the windfall that such an adjustment would provide to ILECs. MCI stated that if the commission finds it appropriate to provide more universal service support in CBGs where the forward-looking economic cost exceeds the UNE prices, it should also provide a reduction (or credit) for UNE prices in those CBGs where the UNE prices exceed the forward-looking economic costs. MCI found SWBT's "realistic alternative" to allocation of support for a carrier that is providing service via UNEs flawed for two reasons. First, MCI stated that because the FCC and the commission have already found that the provision of service via UNEs meets the statutory criteria for providing service over one's own facilities, the carrier is already eligible for USF support. Secondly, MCI commented that SWBT's assumption that a carrier obtaining UNEs is receiving an economic benefit

is inaccurate because UNEs are designed to recover costs. So the carrier receiving the UNEs is being compensated for the costs of providing the service and the one paying the UNEs needs the USF support to provide market-based rates. MCI contended that SWBT's alternative should be rejected.

MCI, OPC, and Sprint did not provide answers to the commission's hypothetical, but offered comments on how to solve the problem.

MCI argued that this exception to the rule should be eliminated or at least include FUSF support in the adjustment to UNEs to prevent double recovery. MCI also urged deletion of this UNE adjustment because the commission has established statewide average prices for UNEs.

OPC asserted that "the individual examples are less important than the principles," and declared the principles to be: that the forward looking economic costs should be equal to the sum of the unbundled network elements, and that the subsidy should go to the entity bearing the responsibility for maintaining the underlying facilities.

Sprint suggested that UNE pricing be developed using the same geographic areas that are used for TUSF purposes. Sprint stated in its reply comments that it generally agreed with AT & T and MCI that the subsidy should be available to the telecommunications carrier that is providing service to the customer through either its own facilities or through a combination of its own facilities and purchase of UNEs. Sprint opined that the only reasonable solution to the hypothetical examples is to work towards the use of similar geographic boundaries and cost models when determining both UNEs and TUSF costs. Sprint also recommended that if the commission does not want to calculate UNEs on a CBG or lower basis, pricing them on a zone basis is much more advantageous than on a state-wide basis. Sprint argued that pricing UNEs on a zone basis in part, alleviates the potential wide disparities that could exist between the BCPM cost and UNEs priced on a statewide average basis. Sprint recommended that the commission strive for consistency in geographic areas and the use of a costing model for determining UNE prices and TUSF costs.

Regarding Sprint's suggestion that UNE pricing be developed using the same geographic areas that are used for TUSF purposes, SWBT responded in its reply comments that it is a theoretically good argument, but practically speaking, it cannot be followed. SWBT opined that UNE pricing cannot be redone in a more disaggregated fashion to be consistent with the universal service plan. SWBT suggested that this issue be addressed subsequently when the commission reconsiders this plan in three years.

In its reply comments, TTA opined that actual cost was the only choice that allowed UNE rates and USF support to be reconciled and that met the requirements of FTA §252(d). If actual cost is not used, TTA recommended using the model proposed by SWBT and GTE, which restricts the subsidy to carriers having COLR responsibility.

The commission agrees with AT & T, MCI, and Sprint that the carrier providing retail service to the end user should receive the THCUSP support, except where the service is provided to the end user solely through the use of purchased UNEs. The commission established UNE rates through separate proceedings and for different purposes. The commission recognizes that because the support amounts for the THCUSP will be determined in a different proceeding from the UNE pricing proceeding, that there could be an opportunity for inappropriate gaming between the results of the two different proceedings. Therefore, the commission revises subsection (e)(4)(C) to give the commission the discretion to allocate the support amount, if any, for an eligible line provided using solely purchased UNEs between the ETP providing service to the end user and the ETP providing the UNEs.

AT & T and MCI noted that SWBT, the primary contributor to the intraLATA toll pool, would experience a revenue windfall upon elimination of the toll pool. To prevent such an occurrence, both AT & T and MCI suggested that §23.133 be revised to require ILECs who are net contributors to the intraLATA toll pool to reduce either their access rates or their TUSF support amount by an amount equal to what was being paid into the intraLATA toll pool before dissolution of the toll pool.

Although the commission declines to revise the rule as suggested by AT & T and MCI, the commission recognizes that ILECs, such as SWBT, may benefit financially upon the dissolution of the intraLATA toll pool. In order to prevent such an occurrence, the commission clarifies that concurrent with the dissolution of the toll pool and implementation of the small and rural ILEC plan, an ILEC that is a net contributor to the intraLATA toll pool must reduce rates as determined appropriate by the commission by an amount equal to what was paid into the intraLATA toll pool during the latest 12 month period.

Section 23.133(f) establishes information that ETPs shall report to the TUSF administrator or the commission.

SWBT argued that the reporting requirement in §23.133(f)(2)(A) should correspond to the lines being supported. MCI suggested modifying §23.133(f)(2)(A) and §23.134(g)(2) to specifically exclude access lines associated with service resale from line counts that ETPs report to the TUSF administrator. Replying to MCI's request in its reply comments, TTA recommended clarifying amendments for §23.133(f)(2)(A) and §23.134(g)(2).

The commission agrees that clarification is necessary in reference to the number of lines served that ETPs shall report pursuant to §23.133(f)(2)(A). ETPs shall report the following: the total number of access lines on their network; the total number of access lines sold as UNEs; the total number of access lines sold as total service resale; the total number of access lines serving end use customers; and the total number of eligible lines for which the ETP seeks TUSF support. The commission modifies §23.133(f)(2)(A) to reflect this requirement. As discussed above, the commission has added the definition of eligible line to subsection (b).

Section 23.133(f)(3) requires ETPs to report annually to the TUSF administrator that they are qualified to participate in the THCUSP.

MCI said the commission should eliminate the requirement to file annual reports in §23.133(f)(3) and §23.134(g)(3). MCI opined that the less paper the administrator must handle, the lower the cost to the public.

The commission declines to eliminate this requirement. An annual filing is a proactive mechanism that will help the TUSF administrator manage the fund efficiently.

Section 23.134 establishes guidelines for financial assistance to ETPs that provide service in the study areas of rural incumbent ILECs' and small ILECs' areas in the state.

With regard to implementation of the rule, TTA, TSTCI, and JSI emphasized that there must be no disruption to small and rural ILECs' existing revenue streams. In addition, TSTCI and JSI stated that §23.134 should be revised to directly tie the implementation of USF support to the dissolution of the toll pool and the implementation of intraLATA equal access for the small companies. TSTCI and JSI explained that under the approved procedures for the toll pool, an ILEC that receives toll pool settlements must exit the toll pool upon implementation of intraLATA dialing parity. According to TSTCI, this will result in the ILECs losing all pool revenues in excess of toll revenues billed if the ILEC continues to be a toll provider. TSTCI and JSI argued that if TUSF support is not immediately available, this event may significantly harm those small and rural ILECs that must convert to intraLATA equal access prior to the elimination of the toll pool.

TTA suggested that replacement universal service funding be made on an interim basis effective July 1, 1998. TTA stated that an interim mechanism would ensure that any loss of revenue resulting from the elimination of the toll poll, intraLATA dialing parity, and high cost assistance funding (HCAF) is concurrently replaced. In support of its position, TTA explained that small and rural ILECs would not be able to provide data to support final TUSF funding in time for review and approval by July 1, 1998. In addition, TTA stated that the access and toll rate reduction under the THCUSP may not by known by July 1, 1998, and that the small and rural ILECs must implement intraLATA toll tariffs by this date.

The commission declines to revise §23.134 to directly tie dissolution of the toll pool to the implementation of the TUSF. In order to ensure no interruption in support flows, the dissolution of the toll pool will coincide with the implementation of the TUSF. The commission is also not persuaded that replacement universal service funding should be made available on an interim basis effective July 1, 1998. Implementation of the new TUSF is scheduled to occur during the second quarter of 1998. Implementation of the TUSF during this time period will ensure that small and rural ILECs experience a revenue neutral transition from the existing support structures to the new support mechanisms. If, however, a small or rural ILEC believes that universal service support recovery is required prior to the implementation date of §23.134, the small/rural ILEC may seek recovery of additional universal service support under PURA §56.025. Moreover, in order to avoid disruption in the cash flow small and rural ILECs receive and to provide funding for the small and rural companies on the date of the TUSF implementation, the commission will allow ETPs to file interim cost study data, subject to a year-end true-up process. ETPs receiving support pursuant to §23.134 shall file with the commission final cost studies based on test year audited accounting data upon final review of these cost studies by the Texas Exchange Carrier Association (TECA).

TSTCI also urged the commission to streamline the TUSF support proceeding in the manner provided in §23.94, relating to *Small Local Carrier Regulatory Flexibility.* TSTCI stated that having more than one proceeding to establish TUSF funding would make the TUSF transition complex and expensive for the majority of small companies.

The commission believes that the procedural process for implementing the TUSF is sufficiently streamlined and is not persuaded that all aspects of the TUSF should be implemented pursuant to a single proceeding. The information required to establish the amount of TUSF support for small and rural ILECs, to implement PURA §56.025, and to establish federal eligible telecommunications carrier and state ETP status will be the same regardless of whether there is a single or multiple proceedings. The commission is concerned, however, that a single proceeding will result in an overly complex and unwieldy process. For these reasons, the commission will establish concurrent proceedings to implement all aspects of the TUSF. The commission believes that concurrent proceedings will minimize confusion and ensure that the proceedings remain manageable and cost effective.

Section 23.134(b) sets forth the definitions for terms used in the small and rural ILEC plan.

TTA commented that the definition of "test year" for the small and rural ILEC plan should be modified to enable LECs having a fiscal year end other than calendar year end to use their 1997 fiscal year for test year purposes. TTA stated that this modification will ensure that small and rural ILECs do not experience unnecessary increases in audit costs that may be associated with implementation of the new TUSF.

The commission agrees with TTA's suggested revision and makes the necessary change to §23.134(b)(5) to enable small and rural ILECs having a fiscal year end other than calendar year end to use their 1997 fiscal year for test year purposes.

TTA also commented that §23.134(b) should be revised to include definitions for "access lines" and "average number of access lines served." TTA argued that the absence of a definition for "access line," and of a methodology for counting trunks, integrated services digital network (ISDN) lines, and other types of lines, would lead to ambiguous interpretations of these terms. Specifically, TTA recommended that the definition of "access lines" be tied to those lines on which the federal SLC charge is assessed. MCI commented that §23.134 should be revised to clarify that the type of access lines for which support will be provided excludes access lines associated with service resale.

In its reply comments, AT & T opposed TTA's proposed definition of "access lines." AT & T stated that the TTA definition of "access lines" was overbroad and that adoption of this definition would increase the size of the fund unnecessarily.

Although ACSEC took no position on TTA's proposed definition for "access lines," ACSEC commented that an ACSEC rule (1 TAC §255.4) ties the billing of ACSEC's 9-1-1 emergency service fee to the billing of a federal SLC. ACSEC also stated that it had recently re-evaluated the access line definition it has adopted and discovered that telephone companies may bill federal SLCs differently for the same service. For example, ACSEC noted that SWBT bills federal SLCs per channel for ISDN lines, while GTE bills federal SLCs per BRI (Basic Rate Interface) and PRI (Primary Rate Interface) line. ACSEC also commented that marketing efforts and billing practices by both ILECs and competitive providers raise issues of whether a federal SLC is applicable to a line or service.

The commission is not convinced that the absence of a definition for the term "access line" in §23.134(b) creates ambiguity within the rule. It is the commission's intent that for

purposes of calculating the per line support under the small and rural ILEC plan, all eligible lines served will be included in the line count used to determine the support per line. The commission modifies subsection (b) based on these comments. The commission also clarifies that an eligible line is a residential or single-line business line that an ETP serves using its own facilities, purchase of UNEs, or a combination of its own facilities and purchase of UNEs. The commission adds this definition of eligible line as §23.134(b)(1) and changes references to "access line" throughout §23.134 to "eligible line." In addition, the commission clarifies that the ETP providing service to an end user through total service resale will not receive support for that line. Rather, the underlying ETP will receive the support if such line is an eligible line.

Section 23.134(e) sets forth the monthly per-line support calculation to be used for each small or rural ILEC study area. OPC stated that it preferred a total amount of support rather than a per-line amount of support. OPC explained that it was concerned that a per-line support amount would result in an over collection of revenues as a result of demand stimulation and line growth. In reply comments, TSTCI stated that OPC's method of assigning a total amount of support would result in a significant reduction in USF support per access line over time for small and rural ILECs.

The commission concludes that support for small/rural ILECs should be based on a per-line amount rather than a total dollar amount as suggested by OPC. The commission is not persuaded that a per-line support amount will result in an over collection of revenues as a result of demand stimulation and line growth. Rather, the commission is convinced that a per-line basis of support appropriately recognizes that the number of subscribers served by small/rural ILECs may increase and that this would result in a corresponding increase in costs. The commission believes that small and rural ILECs should receive additional support at the same amount per-line as the number of subscribers increase. To provide otherwise would potentially jeopardize a small/rural ILEC's ability to provide supported services in non-competitive, high cost areas of the state. No change to §23.134(e) was made based on this comment.

Section 23.134(e)(1)(A) sets forth the manner in which lost toll pool revenues will be recovered through the Small and Rural ILEC Universal Service Plan.

SWBT commented that the toll pool support calculation in subsection (e)(1)(A) should be "net of access", but offered no justification for its position. TTA recommended language that would revise subsection (e)(1)(A) to include funding for ILECs that become toll providers upon dissolution of the toll pool. Specifically, TTA stated that the toll pool calculation must include funding to reflect any net change in the access charges billed and received by LECs that become toll providers. In its reply comments, MCI stated that TTA's proposed revision was inconsistent with PURA §56.025. MCI argued that PURA §56.025 only authorizes recovery of the reasonably projected reduction in contribution from intraLATA toll service from either the universal service fund or an increase in rates.

The commission declines to revise §23.134(e)(1)(A) in the manner suggested by TTA. The intent of subsection (e)(1)(A) is twofold. First, subsection (e)(1)(A) seeks to provide support to small and rural ILECs in a manner that is not vastly different from the support small and rural ILECs currently receive. Secondly, subsection (e)(1)(A) seeks to encourage small/rural ILECs to operate efficiently by freezing the level of support based on a test year per-line amount. However, the commission believes that it will be necessary under subsection (e)(1)(A) to account for the monetary effects associated with the payment and receipt of terminating access charges in a post-pooling environment. In addition, the commission believes that the revenue impact associated with a small or rural ILEC's decision to provide toll services upon implementation of intraLATA dialing parity can be appropriately considered in a proceeding under §23.136(b)(3).

TTA, TSTCI, and JSI also noted that a majority of the small companies intend to become access providers upon dissolution of the intraLATA toll pool, and that, having made that election, they would implement intraLATA equal access when TUSF funding is implemented. For this reason, TSTCI and JSI also suggested that subsection (e)(1)(A) be revised to allow a small or rural ILEC to elect to be either a primary carrier (toll provider) or secondary carrier (access provider) at the rule's effective date, and to calculate its TUSF requirement based on this option. TSTCI and JSI reasoned that this type of provision would enable an ETP participating in the small and rural ILEC plan to receive USF support for its decision to exit the intraLATA toll market and become a pure access provider. AT & T and MCI strongly opposed TTA's suggestion that the toll pool calculation set forth in subsection (e)(1)(A) should include funding for ILECs that will become toll providers.

The commission declines to revise §23.134(e)(1)(A) as proposed by TTA, TSTCI, and JSI. Although the commission is aware that small companies may chose to exit the intraLATA toll market upon the implementation on intraLATA equal access, subsection (e)(1)(A) is not the mechanism through which support in excess of that currently received through the toll pool may be recovered. As stated previously, subsection (e)(1)(A) seeks to provide support to small and rural ILECs in a manner that is not vastly different from the support small and rural ILECs currently receive. In contrast, §23.136 authorizes recovery of the reasonably projected reduction in contribution from intraLATA toll service from either the universal service fund or an increase in rates. Therefore, the compensation issues associated with the payment and receipt of terminating intraLATA access charges resulting from a small ILEC exiting the toll market are most appropriately addressed in a proceeding initiated pursuant to §23.136(b)(3).

Section 23.134(e)(1)(B) sets forth the manner in which access/toll reductions for small and rural ILECs may be recovered through the universal service fund. If, as a result of the implementation of §23.133, the large ILECs reduce toll and/or access rates, the small and rural ILECs may match the reduction and receive TUSF support for the reduction.

OPC expressed concern about the increased demands that would be placed on the universal service funds if small companies match the rate reductions of a large ILEC. Both TTA and TSTCI noted that although (e)(1)(B) enables small and rural ILECs to recover universal service support for reductions in access/toll rates, the rule limits these reductions to a mirroring of the access/toll rate reductions of a large ILEC, subject to §23.133. TSTCI asserted that this limitation deprives small companies of the flexibility to set their own access rates in the new competitive environment. TSTCI also argued that the access rate reductions that will be implemented by the large ILECs is unknown and that these rates may not provide sufficient revenues to the small company access providers. In order to ad-

dress their concerns, TTA and TSTCI suggested that subsection (e)(1)(B) be revised to provide small and rural ILECs the flexibility to implement access and toll rate reductions to a level "no lower than" the rates of one of large LECs. In support of this proposal, TTA stated that it was unclear whether the access and toll rate reductions of the large LECs would be known by July 1, 1998. TTA also argued that the rule should provide greater flexibility with respect to the level to which toll and access rates could be reduced.

SWBT commented that subsection (e)(1)(B) should be revised to require small and rural ILECs who exchange traffic with SWBT to the reduce their access rates to the revised SWBT level or to the same rate as that of the large ILECs to which traffic is exchanged. SWBT argued that this type of reduction would ensure that transport and termination of calls by both parties is handled in a manner consistent with reciprocal rates charged to other local service providers and rates charged to interexchange carriers.

In reply comments, TSTCI and TTA opposed SWBT's proposal to limit small and rural ILECs to charging SWBT's access rates or to the same rate as the large ILECs to which traffic is exchanged. TSTCI argued that this proposal was unreasonably restrictive on the small ILECs and that greater flexibility on access rates was needed under the rule. TTA stated that the rationale underlying SWBT's proposal was flawed and that access rate differences among carriers had not caused any difficulty in the termination of interexchange traffic.

Although the commission disagrees with TTA's suggestion that §23.134(e)(1)(B) prevents small companies from flexibly setting their own access rates in the new competitive environment, the commission believes that it may be appropriate at the time of the compliance proceedings to consider whether small companies may recover additional universal service support for rate reductions to match the revised carrier common line (CCL) charge, residual interconnection charge (RIC) and/or intraLATA toll rate levels of one of the ILECs receiving support under §23.133. Accordingly, the commission modifies subsection (e)(1)(B) to give the commission flexibility to reach a determination on this issue during the compliance proceedings.

TCG strongly objected to §23.134(e)(1) and (e)(2) on the basis that these provisions allow an ILEC to receive "in perpetuity" universal service support based on embedded cost rather than economic cost. In response to this position, TTA asserted that subsection (e)(1)-(2) were temporary mechanisms that would remain in place only until an appropriate cost model for small and rural ILECs was adopted by the FCC.

With regard to the temporary nature of the provisions in §23.134(e)(1)-(2), the commission agrees with the statements of TTA. The commission is convinced that §23.134(h) ensures that small and rural ILECs will not, in perpetuity, receive universal service support based on historical costs. Pursuant to subsection (h), the commission will, upon adoption of an FCC order implementing a new or revised universal service plan for small and rural ILECs, initiate a project to investigate a mechanism by which small and rural ILECs will transition from the small and rural ILEC plan to a mechanism that calculates support based on a proxy model. Accordingly, no change to subsection (e)(1)-(2) has been made based on TCG's comments.

Section 23.134(h) provides for commission review of the small and rural ILEC plan upon the implementation of a federal universal service support mechanism. TTA commented that subsection (h) presumes that the THCUSP plan is the appropriate support mechanism to which small and rural ILECs should transition. TTA stated that the cost methodology utilized by the THCUSP may not be appropriate for small and rural ILECs and that the rule should not mandate use of a particular cost methodology designed for large LECs. To address this concern, TTA recommended language modifying subsection (h).

Although the commission is sensitive to the concerns expressed by TTA, the commission declines to modify §23.134(h) of the rule. The commission believes that upon adoption of new or amended federal universal service support rules for rural and high cost areas it is necessary to investigate a mechanism by which ETPs receiving support pursuant to this section would transition to a mechanism which utilizes a forward looking cost methodology in calculating the level of universal service support a carrier is entitled to receive. The commission disagrees with TTA's assertion that the rule presumes that the cost methodology utilized by the THCUSP for large ILECs is necessarily the appropriate forward looking cost methodology to which small and rural ILECs will transition. The commission recognizes that any transition mechanism must facilitate entry of small and rural ILECs into the competitive telecommunications market and at the same time take into consideration the unique characteristics of small and rural ILECs. Moreover, the commission is aware that a forward looking cost methodology for small and rural ILECs should be able to predict small/rural carriers' forward looking economic cost with sufficient accuracy to ensure that carriers serving high cost rural areas could continue to provide supported services at reasonable rates.

TSTCI also recommended that §23.134 be revised to allow HCAF and the provision in §23.53(d), relating to *High Cost Assistance (HCA),* to be rolled into TUSF support. In its reply comments, however, TSTCI withdrew its recommendation that §23.134 explicitly state that existing HCAF will roll over to USF support, and concurred instead with TTA's recommendation that §23.136 be used for that purpose.

The commission makes no change to the rule based on this comment.

Section 23.134(g) sets forth the reporting requirements for participation in the small and rural ILEC plan.

MCI commented that the requirement contained in subsection (g)(3) that ETPs file annual reports was unnecessary and should be deleted.

The commission, however, is not persuaded that an ETP's report of its access line count sufficiently ensures that the ETP continues to provide the supported services and satisfies the remaining criteria for receipt of TUSF support. In addition, the commission is convinced that the annual reporting requirements are a reasonable means of ensuring that ETPs remain in compliance with the certification requirements and that such filings will not impose undue administrative costs on either the ETP or the administrator. The commission makes no change to §23.134(g) based on this comment.

Section 23.136 implements the provisions of PURA §56.025 which provide for universal service funding in the event of certain identified events occurring after September 1, 1995.

MCI and TCG urged the commission to withdraw §23.136 and all other rules that implement PURA §56.025, on the grounds that these provisions have been federally preempted. MCI

maintained that the provisions of §23.136 establish, under the guise of universal service, a revenue neutral support mechanism in a manner that is inconsistent with the federal requirements for state universal service programs. MCI also asserted that PURA §56.025 violated the FTA on the grounds that it was not competitively neutral. Specifically, MCI argued that the Texas statute granted ILECs an unfair advantage over other providers because only ILECs are eligible to receive universal service support under PURA §56.025. In support of its position, MCI cited a Kansas Court of Appeals decision, *Citizen's Util. Ratepayer Bd. v. Kansas Corp. Comm'n,* 1997 Kan. App. LEXIS 127, *5 (1997), which held that universal service programs designed to protect the revenues of ILECs without regard to economic costs are preempted by FTA §254. MCI also argued that PURA §56.025 is not needed to accomplish the goal of universal service in Texas, because the programs implemented through PURA §56.021 provide the necessary tools to ensure that all residents in the state have access to basic local telecommunications services at reasonable rates. AT & T supported the position of MCI and stated that the purpose of USF was not revenue replacement, but rather the assurance of quality telecommunications services at a reasonable cost.

In its reply comments, SWBT and Sprint disagreed with the arguments presented by MCI. SWBT challenged MCI's assertion that FTA §254 preempted the provisions of PURA §56.025, and thus §23.136, on the basis that if Congress had intended to preempt state law via the FTA, it would have expressly done so. Sprint argued that the FTA neither endorses nor prohibits revenue neutrality and noted that the FCC has, on an interim basis, established a revenue neutral USF. SWBT and Sprint also pointed out that at the outset of the universal service plan, it is appropriate for an ILEC to be revenue-neutral so long as there is not a continuing guarantee or protection of ILEC revenues from competition. SWBT cited PURA §58.062 in support of its position that any reduction in access charges must be accomplished in a revenue neutral manner. Sprint stated that revenue neutrality upon implementation of the universal service fund ensures that there are no net winners or net losers as a result of fund implementation and that revenue neutrality at the outset does not guarantee revenues to an ILEC in the face of competition.

SWBT and Sprint also addressed MCI's references to the recent Kansas Court of Appeals decision concerning universal service. SWBT and Sprint emphasized that the commission should give little weight to the Kansas decision cited by MCI because a Petition for Review of the decision has been filed and granted by the Kansas Supreme Court. In addition, SWBT argued that the Kansas decision was not applicable because the TUSF does not protect the revenues of ILECs, but rather reduces the implicit support in access and toll with an explicit and cost-based universal service plan. SWBT and Sprint also argued that the Kansas decision was not persuasive because the Kansas Universal Service Fund (KUSF) was not formulated in the same manner as the TUSF. Sprint reasoned that unlike the Texas plan, which determines the amount of the access reduction by the amount of TUSF support received, the size of the Kansas fund was dictated by the amount of the access reductions made by the ILECs. SWBT and Sprint also pointed out that the KUSF was not developed using a cost study component which is an inherent feature of the TUSF plan. In addition, SWBT and Sprint maintained that the TUSF plan does not violate FCC requirement of competitive neutrality, because TUSF payments under the plan are equally available to new entrants who meet the requirements of the Texas plan.

In its reply comments, GTE referenced PURA §55.065 in responding to the arguments raised by MCI and TCG. The commission assumes that GTE intended to reference PURA §56.025 in its remarks and has summarized GTE's comments accordingly. In its reply comments, GTE strongly objected to MCI's and TCG's proposal that the commission withdraw §23.136. Specifically, GTE objected to the federal preemption and revenue neutrality arguments MCI raised in support of its position to withdraw §23.136. GTE argued that MCI had erred in its assertion that PURA §56.025 violated the FTA and the FCC's Order on universal service. GTE explained that neither MCI nor the Kansas Court of Appeals provided any indication as to what language in the FTA prohibits a state from implementing a universal service fund plan that has a revenue neutral component. In addition, GTE challenged MCI's assertion that the provisions of PURA §56.025 were not competitively neutral. GTE argued that PURA §56.025 does not disadvantage non-ILECs because existing implicit subsidies only impact those companies that have historically funded universal service. GTE also challenged MCI's assertion that PURA §56.025 violates the competitive neutrality provisions of PURA §51.001(c)(1). GTE stated that PURA must be construed as a whole and that the Legislature would not enact universal service provisions that violate another section of the statute. GTE also argued that the two PURA provisions evidenced a belief on the part of the Legislature that PURA §56.025(b) was not anti-competitive. In addition, GTE asserted that PURA §56.025 does not conflict with FTA §254(k), which relates to the pricing of services eligible for universal service. GTE stated that it was unclear how FTA §254(k) bore any relation to the requirements set forth in PURA §56.025. Finally, GTE emphasized that if MCI's position is adopted and ILECs are prohibited from recovering lost revenues through the TUSF, the companies will have no alternative but to increase local rates.

In its reply comments, TTA joined in the comments of SWBT and GTE and urged the commission to reject MCI's recommendation that the commission withdraw §23.136. In support of its position, TTA stated that withdrawal of §23.136 would require the companies to meet the revenue obligations provided under PURA §56.025 through local rate increases rather than USF support. TTA also asserted that the Kansas Court of Appeals decision cited by MCI should not be relied upon by the commission on the basis that the decision can not be reconciled with the FCC's universal service order which maintained revenue neutrality for rural telephone companies. TTA also argued that the Kansas Court of Appeals decision failed to give consideration to the normal ratemaking processes of a public utility commission. In addition, TTA criticized the Kansas decision for its failure to reference the recent Eighth Circuit orders in *Competitive Telecommunications Ass'n v. F.C.C.,* 120 F.3d 753 (8th Cir. 1997), which have significantly limited the breadth of the FCC's implementation of the FTA.

The commission is not persuaded by the arguments presented by MCI and AT & T and declines to withdraw §23.136. Although §23.136 provides a revenue neutral mechanism through which ILECs serving fewer than 5 million access lines may seek to recover funds from the TUSF, the commission concludes that §23.136 does not violate the provisions of the FTA or the principle of competitive neutrality. FTA §254 does not expressly prohibit states from adopting a revenue neutral universal service

funding mechanism. Rather, FTA §254 provides a safe harbor for states creating universal service procedures and precludes the FCC from preempting those procedures under FTA §253(a) if certain guidelines are followed. In addition, FTA §254(f) grants states the authority to adopt intrastate universal service funds. The commission believes that §23.136 is consistent with the principles set forth in FTA §254(f) and (k) because it does not subsidize competitive services nor does it require local service to bear more than a reasonable share of joint and common costs.

The commission is also not persuaded by the Kansas Court of Appeals decision cited by MCI in support of its federal preemption argument. From a procedural perspective, the commission does not consider the ruling of a Kansas court to be of any impact on Texas law. Further, the commission notes that the Kansas Supreme Court has granted a petition for review filed by Sprint and other parties regarding the opinion. Pursuant to Kansas Supreme Court Rule 8.03(l), in instances in which a petition for review is pending before the Supreme Court, "the opinion of the Court of Appeals is not binding on the parties, may not be cited as precedent, and is not binding on district courts." In addition, the commission disagrees with the substantive conclusions reached by the Kansas Court of Appeals in its decision. Not only has the Kansas Court of Appeals imposed a restriction on intrastate regulation authority which is not explicitly contained in the FTA, but the KUSF referenced in the Kansas Court of Appeals decision is distinguishable from the TUSF in several respects. First, the KUSF was not formulated in the same manner as the TUSF. Unlike the Kansas fund, whose size was determined by the amount of the ILEC access reductions, the TUSF will utilize a forward looking cost methodology to determine the size of the universal service fund. In addition, unlike the KUSF, access, toll, or other rate reductions under the TUSF would be based on the amount of the TUSF support received by the ILEC. These reductions are necessary in order to ensure that the ILEC does not receive a financial windfall. The rate reductions are also necessary in order to ensure that the existing implicit support in rates is replaced with an explicit, cost-based universal service plan as intended by the FTA.

The commission also finds support for its position by reviewing the interim universal service support mechanism that the FCC has adopted. Specifically, the FCC has adopted a revenue neutral universal service support mechanism for small and rural companies. The commission believes that adoption by the FCC of a revenue neutral support mechanism supports the commission conclusion that establishment of a state universal service fund with a revenue neutral component does not violate the FTA.

Section 23.136(b) sets forth the applicability and circumstances under which an ILEC may seek to recover funds from the TUSF.

TTA and JSI sought clarification regarding whether subsection (b)(1) continues funding for the existing HCAF. TTA stated that subsection (b)(1) covers only changes in HCAF after the effective date of the rule. As a result, TTA argued that there is no section in the rule which covers existing HCAF. TTA also maintained that subsection (b) should be revised to reference the effective date of PURA §56.025 in order to clarify that all subparagraphs of subsection (b) apply to changes occurring from and after September 1, 1995.

The commission clarifies that §23.136(b)(1) provides continued TUSF support for the existing HCAF. The commission declines, however, to revise subsection (b) to specify that all subparagraphs of subsection (b) apply to changes occurring from and after September 1, 1995. Although subsection (b) enables a carrier that is currently receiving HCAF pursuant to P.U.C. Subst. R. §23.53(d) to request a continuation of its existing HCAF support amount, this subsection does not provide a mechanism through which qualifying carriers may seek to recover future reductions in high cost assistance revenue. Specifically, the commission does not interpret subsection (b) to allow qualifying ILECs to seek reimbursement of any change in revenue that may be experienced as a result of a small/rural ILEC's eventual transition to a cost based support calculation.

TTA, TSTCI, and JSI also questioned whether subsection (b)(3) permitted a small ILEC to recover universal service support if it exits the intraLATA toll market as a regulated carrier. TTA and TSTCI contended that subsection (b)(3) should be revised to clarify that PURA §56.025 permits an ILEC to recover through the TUSF the resulting loss of contribution from intraLATA toll that will occur if the ILEC exits the toll market upon implementation of intraLATA dialing parity.

In reply comments, MCI reasserted its position and argued that PURA §56.025 does not guarantee revenue recovery in the event that an ILEC chooses to exit the intraLATA toll market. MCI argued that the ILEC position that such recovery is available misinterprets PURA §56.025(d), which authorizes only the recovery of the "reasonably projected reduction in contribution" from intraLATA toll services. Under MCI's interpretation of PURA §56.025, ILECs may only recover the loss in contribution that they experience as a result of competition and not on the basis of a business decision to exit the retail intraLATA toll market altogether. MCI also urged the commission to reject suggestions that would transform the TUSF into what MCI believes would be a revenue replacement support program for ILECs. MCI stated its belief that such a mechanism would enable ILECs to maintain monopoly prices and send improper price signals to the access market.

TCG argued that subsection (b) was inconsistent with the emergence of a competitive market. Specifically, TCG objected to the use of TUSF to compensate for changes related to the intraLATA 1+ dialing or from other governmental agency action. In addition, TCG maintained that disbursement of universal service support pursuant to subsection (b) should occur only after a commission hearing and that any increase in federal universal service funds should result in decreased state universal service support.

The commission disagrees with TTA, TSTCI, and JSI that §23.136(b)(3) should be revised to specifically permit qualifying ILECs to recover through the TUSF the resulting loss of contribution from intraLATA toll that will occur if the ILEC exits the toll market upon implementation of intraLATA dialing parity. Although subsection (b)(3) enables an ILEC to recover through either the universal service fund or an increase to rates the reasonably projected reduction in revenue as a result of the implementation of intraLATA dialing parity, the commission believes that the issue of whether a qualifying ILEC may recover revenues lost as a result of its decision to exit the toll market is one which must be considered by the commission in the course of the proceeding under §23.136(b)(3). Accordingly, no change to subsection (b)(3) has been made based on these comments.

Section 23.136(d)(1) requires that applications filed under this rule be docketed.

TTA stated that proceedings under §23.136 which are not contested do not need to be docketed. Sprint noted that automatic docketing of this type of filing interfered with the legislative intent to process these applications quickly and efficiently through administrative processing. In its reply comments, Sprint concurred with TTA's comment that docketing under §23.136 was necessary only when parties intervene or objections are raised.

The commission agrees with the comments of TTA and Sprint and makes the necessary revision to §23.136(d)(1) of the rule.

Only TCG commented regarding §23.138. TCG stated that §23.138 was not necessary because the proposed rules *in toto* adequately and comprehensively address universal service issues in Texas.

The commission disagrees with TCG. The commission believes that there may be circumstances under which ILECs serving high cost areas of the state require financial assistance, in addition to the funds provided under §§23.133, 23.134, or 23.136 of this title, so that these carriers may continue to provide basic local exchange service at reasonable rates. Section §23.138 implements a mechanism through which additional TUSF financial assistance may be recovered. The commission believes that the absence of such a recovery mechanism would adversely affect universal service because it would prohibit a carrier from receiving additional financial assistance in instances in which the carrier can demonstrate a revenue need in PURA §53.105 proceeding.

Section 23.142 implements the Lifeline and Link Up Service programs for low income consumers.

TTA and TSTCI recommended that the adoption date for the rule be accelerated to ensure compliance with federal universal service requirements by January 1, 1998. TTA asserted that because the rule would not be adopted until December 17, 1997, a state Lifeline program could not become effective by January 1, 1998. As a result, TTA was concerned that carriers currently receiving federal universal service assistance may no longer qualify for that support as of January 1, 1998. TSTCI agreed with TTA's comment that timely certification of eligibility was vital.

In order to ensure that eligible carriers receive federal certification by January 1, 1998, the commission's Office of Regulatory Affairs (ORA) has initiated Docket No. 18100. Docket No. 18100 provides a process through which eligible carriers will receive federal certification prior to January 1, 1998, and therefore continue to qualify for federal universal service assistance. Because a proceeding has already been initiated to address the concerns raised by TTA and TSTCI, the commission declines to accelerate the adoption of §23.142.

Section 23.142(d)(1) sets forth the requirements for the provision of Lifeline services. TTA, GTE, TSTCI, and SWBT commented on the subsection (d)(1)(B) toll limitation requirements. Although TTA acknowledged that the toll limitation requirements in subsection (d)(1)(B) mirror the requirements of the federal Lifeline program, TTA objected to the rule provisions on the grounds that toll control was technically difficult to provide, and that other options, such as debit cards, were more efficient. TTA also noted that a number of parties have challenged the toll limitation requirement of the federal Lifeline program and suggested that the commission join in this challenge. To address its concerns, TTA recommended revisions to subsection (d)(1)(B) that would require carriers to provide toll control only if required by the federal Lifeline program and that would recognize prepaid calling cards as an effective means of toll control. GTE concurred with TTA's objection to the toll limitation requirements set forth in subsection (d)(1)(B) and supported TTA's suggested revisions. TSTCI also objected to the toll control requirement for toll control in subsection (d)(1)(B) and stated that because none of its members had systems in place to provide this service, these companies would be forced to request waiver proceedings under subsection (d)(1)(B)(ii).

The commission declines to revise §23.142(d)(1)(B) as suggested by TTA. In order to be eligible for federal universal service assistance, a carrier must provide Lifeline service in conformity with 47 C.F.R. §54.401. The toll limitation requirement set forth in subsection (d)(1)(B) mirrors the federal toll limitation requirement for Lifeline service. The commission concludes that these requirements are necessary in order to satisfy the criteria necessary to receive federal universal service assistance. The commission notes that carriers unable to satisfy the requirements of subsection (d)(1)(B) may seek a waiver of the toll limitation requirements pursuant to subsection (d)(1)(B)(ii) of the rule. As suggested by the parties, the commission will continue to monitor developments at the FCC regarding the federal toll limitation provisions to determine if future revisions to the subsection are required.

Section 23.142(d)(1)(B)(ii) sets forth the circumstances under which the commission may waive the toll limitation requirements of subsection (d)(1)(B). SWBT commented that the waiver provision does not take into account circumstances where the LEC cannot install the necessary equipment because it is not the intraLATA provider.

The commission disagrees with the comment of SWBT. Section 23.142(d)(1)(B)(ii) provides that the commission may grant a waiver of the toll control requirement upon a finding that exceptional circumstances prevent an eligible telecommunications carrier from providing the service. The commission believes that the "exceptional circumstances" standard provides sufficient latitude for the commission to consider a wide range of circumstances that may prevent a carrier from providing the required toll limitation services and that such circumstances are best reviewed on a case specific basis. Accordingly, no change to the rule has been made based on this comment.

Section 23.142(d)(1)(C) prohibits disconnection of service for non-payment of toll charges. TSTCI commented regarding the waiver provision contained in subsection (d)(1)(C)(ii). Specifically, TSTCI recommended deleting the phrase "qualifying low-income consumers " and inserting the phrase "qualifying Lifeline customers" in order to tighten and clarify the application of the rule. In order to minimize tariff filings, TSTCI also recommended revising the rule to allow for the automatic waiver of subsection (d)(1)(C) upon commission approval of a tariff offering toll blocking at no charge for small ILECs that include this provision in their Lifeline tariffs.

The commission declines to make the revisions suggested by TSTCI. With regard to the reference to qualifying low-income customers in §23.142(d)(1)(C)(ii), the commission believes that the reference to these customers, as opposed to qualifying Lifeline customers, is more descriptive and succinct because low-income customers are the class of customers that are eligible to participate in the Lifeline Service program. The

commission also declines to revise the rule to provide for an automatic waiver of the prohibition against disconnection for non-payment of toll charges. The commission concludes that such a provision is not appropriate because the provision of toll limitation is only one of three conditions that must be satisfied in order to qualify for a waiver under subsection (d)(1)(C)(ii).

Section 23.142(d)(2) sets forth the Lifeline support amounts that eligible telecommunications carriers may receive for each qualifying low-income consumer participating in the Lifeline Service program. TTA and TSTCI recommended language to revise subsection (d)(2)(B)(ii) and (iii) in a manner that would ensure that an eligible carrier was entitled to reimbursement from the USF upon compliance with the requirements of the Lifeline program.

The commission agrees and makes the necessary modifications to §23.142(d)(2)(B)(ii) and (iii).

TTA questioned whether the commission had statutory authority to authorize a state-approved reduction of $3.50 in the monthly amount of intrastate charges a qualifying low-income consumer pays. TTA also questioned whether the commission had statutory authority to fund this state-approved reduction from the TUSF. In order to resolve this issue, TTA suggested that the commission seek an Attorney General's opinion before taking further action.

The commission declines to act on this recommendation. The commission's authority to authorize state-approved reductions in the monthly intrastate charges paid by qualifying low-income customers and the corresponding reimbursement of these reductions through the TUSF is authorized under PURA §51.002(1)(G), which defines "basic local telecommunications service" as including "lifeline and tel-assistance service." Pursuant to PURA §56.021, the commission bears the responsibility of adopting and enforcing rules which establish a universal service fund to assist LECs in providing basic local telecommunications service at reasonable rates in high cost rural areas. The commission believes that the state-approved reduction in the monthly intrastate charges paid by qualifying low-income customers and the funding of these reductions through the TUSF ensure that basic local telecommunications service is available to low-income customers at reasonable rates. By implementing the state-approved reduction of $3.50, the state becomes eligible to obtain one half of that amount, $1.75, from the FUSF.

Section 23.142(d)(2)(B)(iii) required ILECs that are eligible telecommunications carriers and that have Lifeline programs in place prior to the implementation of the rule to reduce rates for toll and access services by an amount equivalent to the amount of support the ILEC is eligible to receive under this clause.

The commission revises (d)(2)(B)(iii) to delete the reference to toll and access services. The commission has concluded that the services to which the rate reduction will be applied is more appropriately determined in the compliance proceeding.

TTA also sought clarification on whether the state-approved discount for Lifeline service will become effective January 1, 1998. TTA suggested that if the commission determined that the state- approved discount was not effective as of January 1, 1998, the rule should be revised to clarify that the state discounts become effective on the date of implementation of the TUSF.

The commission is not persuaded to revise the rule as suggested by TTA. The state-approved discount for Lifeline service is effective as of January 1, 1998. The commission recognizes that the TUSF support will not be available for the additional $3.50 state discount until the TUSF is implemented. Those companies providing the state-approved discounts pursuant to §23.142(d)(2)(iii)(I) as of January 1, 1998, however, may seek to recover the support amounts incurred as of January 1, 1998 from the TUSF upon implementation of the fund.

Section 23.142(e)(1)(B) requires carriers to defer connection charges for Lifeline customers for one year on an interest-free basis. Section 23.142(f)(A)(ii) requires carriers to notify eligible consumers by mail of changes in their service that are necessary to qualify them to receive Lifeline service.

GTE argued that subsections (e) and (f) should be revised to permit carriers to recover these and any other legitimate expenses from either the TUSF or the qualifying low-income consumer.

No change to the rule has been made based on this comment. The commission concludes that the expenses associated with the requirements set forth in §23.142(e) and (f) will be minimal and that carriers will not suffer economic harm as a result of providing these services.

Generally, §23.142(f) enumerates the obligations of the consumer, TDHS, and the eligible telecommunications carrier with regard to the Lifeline and Link Up Service programs.

TTA recommended that subsection (f)(2) be revised to clarify that consumers must apply for the Lifeline and Link Up Service Programs.

The commission is not persuaded to adopt TTA's recommendation. Section 23.142(f)(1) sets forth the obligations of the customer regarding Lifeline and Link Up Services. Included within these obligations is the requirement that the customer apply for the Lifeline and Link Up Service programs.

SWBT suggested that subsection (f)(3)(B) was not consistent with subsection (f)(3)(A), but provided no explanation of its position.

The commission concludes that §23.142(f)(3)(A) and (B) are consistent and has made no change to the rule based on this comment. Even though the commission makes no change in response to this comment, the commission makes minor modifications to clarify §23.134(f).

Sections 23.142(f)(2) and 23.143(d)(2) require the TDHS to provide carriers participating in the Lifeline, Link Up, and Tel-Assistance programs with lists of eligible consumers on a semi-annual basis. The data exchange process will be complex in areas where basic local telecommunications services can be provided by more than one carrier. The commission asked parties whether there is a less burdensome manner for TDHS and participating carriers to exchange necessary information.

AT & T, MCI, SWBT, and TTA recommended that TDHS disseminate eligible consumer information to the carriers electronically and in a manner that would ensure confidentiality. Specifically, AT & T suggested constructing a restricted, confidential Internet web site. SWBT suggested implementing an online carrier-specific retrieval database that could be accessed by passwords. TTA recommended implementing a dial-up access system that would be updated daily as TDHS received and processed Lifeline and Tel-Assistance applications.

MCI stated that an ILEC whose eligible customer subsequently changed companies should be required to provide the customer's eligibility information to the new provider. TTA objected to this suggestion and indicated its support for the data exchange procedures set forth in the proposed rule.

Both CU and OPC endorsed an automatic enrollment system which would eliminate the consumer application requirement. CU argued that the State of New York currently uses an automatic enrollment system and that the program is more efficient and effective than the system proposed in the rule. In addition, CU suggested that if the consumer application requirement is retained, consumers should be allowed to file their applications directly with the phone companies, as well as with TDHS. TTA objected to the implementation of an automatic enrollment program and indicated that the consumer should bear some responsibility to indicate a desire to participate in the available discount programs.

CU also endorsed using a self-certification system similar to that in place in the State of California. GTE objected to this suggestion and suggested that self-certification may permit consumers to game the system. In support of its position, GTE stated that over 20% of GTE's California customers were self-certified to receive low-income support and that this percentage was unreasonably high. GTE also asserted that it was not appropriate to risk increasing the bills of all Texas consumers as a result of low income self-certification when a simple linkage to TDHS provided an existing and rational screening mechanism to ensure that participation in these programs was justified.

As an alternative to both the application procedure set forth in the rule and the automatic enrollment option, OPC suggested that TDHS provide a verification slip to each eligible consumer at the time the check was issued and that the consumer would then present the verification slip to the telephone company when paying the bill. OPC explained that this procedure would link eligible consumers with the appropriate telephone company and preserve the consumer's right to elect not to participate in the programs. In reply comments, TTA stated that it supports OPC's proposal, but recommended that the customer be required to present the verification slip only when service was ordered and not every month when the bill was paid.

While the commission declines to revise the rule as published, the commission is receptive to the suggestions offered by the commenting parties regarding the registration process for the Lifeline and Tel-Assistance programs. Accordingly, the commission will consider initiating a proceeding to examine ways in which the exchange of information between TDHS and participating carriers can be simplified and ways in which the application procedures for participation in these low-income programs can be made more efficient. In order to ensure that qualifying low-income consumers receive the full benefits of the Lifeline and Link Up Service programs during the period in which procedures regarding the exchange of information with TDHS are developed, the commission clarifies that a qualifying low-income consumer may self certify that he/she is eligible to participate in the Lifeline and/or Link Up Service programs pursuant to §23.142(f)(3)(C).

Sections 23.142(g) and 23.143(i) establish tariff requirements for the Lifeline Service and Link Up Service programs, and the Tel-Assistance Service program, respectively.

MCI and Sprint urged the commission to revise §23.142(g) and §23.143(i) to enable providers not currently in commercial operation to file the requisite tariffs either when they commence commercial operation or when they apply for designation as eligible telecommunications carriers.

The commission agrees with the comment of MCI and Sprint and has made the necessary revisions to the rules. Specifically, the commission revises §23.142(g) to require the filing of a tariff to implement Lifeline and Link Up Service prior to the filing of an application for designation as an eligible telecommunications carrier. The commission also revises §23.143(i) to require ILECs to file a tariff implementing Tel-Assistance Service within 30 days following the effective date of the rule. The commission believes that reducing the time period from 60 to 30 days in which to file a tariff implementing Tel-Assistance Service is consistent with the 30 day filing requirement for the Lifeline and Link Up tariff established in §23.142(g). In addition, the commission revises §23.143(i) to require LECs to file a tariff implementing Tel-Assistance Service within 30 days of the effective date of §23.143 or within 30 days of beginning to provide local exchange service in Texas, whichever is later.

Section 23.143 implements the provisions of PURA §§56.071-56.078 and sets forth the requirements of the Tel-Assistance Service Program.

TTA, TSTCI, and Sprint argued that qualifying low-income consumers should not be allowed to participate in both the Tel-Assistance and Lifeline Service programs. Although the parties agreed that the consumer should receive the largest available discount under either program, the parties argued that the discount structures should not be stacked. TSTCI pointed out that a combined application of the two programs could reduce the rate below the $2.50 minimum specified in §23.142.

The commission declines to revise §23.142 and §23.143 to prohibit the aggregation of the Lifeline and Tel-Assistance discount rates as suggested by TTA, TSTCI, and Sprint. The aggregation of the discount rates will enable qualifying low-income customers to cover the costs associated with having access to basic local telecommunications services. In response to the TSTCI comment, the commission notes that §23.142(d)(2)(C)(iii) ensures that the monthly discounted residential rate for qualified low-income customers will not be reduced below $2.50 even in the event that the discount rates are aggregated. The commission believes that the $2.50 minimum specified rate strikes an appropriate balance between guaranteeing qualifying low-income customers access to basic local telecommunications service at a reasonable rate and ensuring that the customer bear a portion of the cost associated with the provision of telecommunications service.

SWBT mentioned that the rule restricts the supported rate for basic local telecommunications service to $2.50 per month. SWBT noted that this restriction created a conflict for its customers that receive service under the tariffed rates for grandfathered two-party, four-party and measured service. SWBT stated that the tariffed rates for these grandfathered services falls below $2.50. In order to address this issue, SWBT suggested that these customers, as well as existing customers for Aid to Families with Dependent Children (AFDC), the Medical Assistance Program (MAP), and Women, Infants and Children (WIC) at existing premises be exempted from the $2.50 restriction.

The commission declines to revise the rule as suggested by SWBT. The baseline rate established in §23.142(d)(2)(C)(iii) is applicable to the Lifeline Service Program discounted rate

and not other discount programs. Therefore, SWBT customers receiving service under the tariffed rates for grandfathered two-party, four-party and measured service may continue to receive service under the tariffed rates for grandfathered two-party, four-party and measured service.

Section 23.147 sets forth the requirements for designation of LECs as Eligible Telecommunications Providers to receive Texas Universal Service Funds (TUSF).

Section 23.147(b) sets forth the definitions. TCG strongly supported §23.147(b)(1), which defines the certificated service area, with the clarification that the certificated service area may be the geographic area defined in a service provider certificate of operating authority (SPCOA).

The commission declines to clarify the definition as requested by TCG. PURA §51.002(4) defines a LEC as a telecommunications utility that has a certificate of convenience and necessity (CCN) or a certificate of operating authority (COA). Given that an SPCOA is not a LEC and, therefore, an SPCOA is not eligible to be certified as an ETP, the clarification requested is unnecessary.

Section 23.147(c) sets forth the requirements for establishing ETP service areas. As proposed, subsection (c)(1) set forth the requirements for establishing a THCUSP service area based upon CBGs.

GTE noted that for universal service purposes a CLEC's THCUSP service area should mirror the underlying ILEC's service area, including split CBGs. TTA objected to the proposed rules allowing an ETP to gerrymander its ETP service area, thereby allowing it to selectively serve any size area, yet receive TUSF funds for doing so. TTA recommended revising subsection (c)(1) to require an ETP to serve whole CBGs in order to be eligible for TUSF in that CBG unless its existing certificated service area or the underlying ILEC's certificated service area splits a CBG.

Sprint PCS applauded the commission's proposal in §23.147(c) to designate eligible carrier service areas on the basis of CBGs, averring that it would be anticompetitive to define service areas on the basis of the incumbent's coverage areas. Sprint PCS opined that the FTA requires state commissions to promote competition and encourage the deployment of advanced telecommunications technologies and that the Texas' Utilities Code makes clear that the commission should promote diversity of telecommunications providers and interconnectivity. Sprint PCS further noted that new entrants should not be forced to build and conform their network deployment and use of technologies in a manner identical to the plan developed by the ILECs. Rather, Sprint PCS commented, if the commission finds that the new entrant's service to an alternatively defined area advances the goals of universal service, that area should be defined as the service area for universal service purposes.

In order to maintain consistency with §23.133, the commission revises §23.147(c)(1) to remove the specific geographic area of a CBG. The revised subsection refers to the geographic area determined by the commission pursuant to §23.133, rather than to the CBGs. In response to comments that the CBG may not be the appropriate geographic area once the cost models are completed, the commission revises §23.133 to state that the commission would determine the cost based upon CBGs or other appropriate geographic area as determined by the commission.

The commission declines to make the changes requested by GTE and TTA. The commission agrees with Sprint PCS that it is anticompetitive to define service areas on the basis of an ILEC's CCN territory. Basing TUSF service areas on the ILEC's existing territory would require a new entrant to conform its service areas to the ILEC's area or not be eligible to receive TUSF support. Either of these results would dampen competitive entry by potential new ETPs. In response to TTA's comment that an ETP should be required to serve whole CBGs, except when its existing certificated service area splits a CBG or the underlying ILEC's certificated service area splits a CBG, the commission agrees that whole CBGs, or other geographic areas as determined by the commission, should be served except where the ETP's existing certificated service area splits a CBG or other geographic area and notes that subsection (c)(1) requires an ETP to serve an entire CBG or other geographic area unless its certificated service area does not encompass the entire CBG or geographic area. Further, the commission notes, that because the section does not define service areas on the basis of an ILEC's CCN territory, it is unnecessary to provide an exception to the requirement that an ETP serve whole CBGs or other geographic areas for a situation where the underlying ILEC's certificated service area splits a CBG or other geographic area.

Sprint PCS specifically objected to the proposal to define service area with reference to CBGs within a carrier's "certificated service area," and offered conforming revisions.

The commission declines to make the revisions requested by Sprint PCS. As discussed as follows, the commission finds that, because only LECs are eligible to be certified as ETPs and all LECs have certificated service areas as CCN or COA holders, the revisions requested by Sprint PCS are not necessary.

Section 23.147(d) sets forth the criteria for designation of ETPs.

Section 23.147(d)(1) states that only LECs, defined as CCN and COA holders, shall be eligible to receive TUSF support.

Sprint PCS, PrimeCo, and AT & T opined that wireless carriers should be permitted to be certified as ETPs.

Sprint PCS asserted that proposed subsection (d) violated the Communications Act of 1934, as amended, 47 U.S.C. §332(c)(3)(A) (West Supp. 1997) (the Act), by requiring mobile service providers to obtain a certificate in order to be eligible for state support. Sprint PCS acknowledged that the commission's decision to restrict eligibility to certificated LECs appeared to be based on PURA §56.021(1) and §56.023(a)(2) and (b), but asserted that there was no obligation to adhere to the state law where it directly conflicted with federal law. Sprint PCS urged the commission to revise this rule to comply with the requirements of federal law, and offered revisions for this purpose. In the alternative, Sprint PCS encouraged the commission to petition the FCC for a declaratory ruling regarding the validity of the certificate restriction imposed by the Utilities Code. PrimeCo stated in its reply comments that it agreed with Sprint PCS that the commission's universal service rules must not preclude wireless carriers from being eligible to receive TUSF support when the wireless service they provide satisfies the criteria established in the FTA.

PrimeCo stated that commercial mobile radio service (CMRS) providers do not offer a service that includes flat-rate, single party residential and business local service and urged the commission not to impose a requirement that all service

providers match the service structure that currently exists for the wireline technology and the ILECs. PrimeCo commented that, in the alternative, the commission should state in its rule that a good cause waiver of the requirement to provide all of the services listed in §23.133 may be granted to wireless carriers seeking to qualify as ETPs.

In its reply comments, AT & T agreed that CMRS providers should be eligible to draw from the TUSF. AT & T argued that it would be technological discrimination to deny TUSF eligibility to a carrier that otherwise meets the criteria of the Act §214(e), as amended. As an alternative, AT & T suggested keeping the restriction against wireless carriers but to provide the good cause exception as suggested by PrimeCo.

TTA opposed Sprint PCS' proposal to allow mobile carriers to qualify as ETPs without obtaining state certification. TTA also stated that PrimeCo's proposal to allow mobile carriers to qualify as ETPs without providing basic local exchange services was not competitively neutral. TTA opined that there is nothing in the proposed rules that restricts a CMRS provider from offering the services which the commission has defined for support and qualifying as an ETP. TTA further comments that what the CMRS providers object to is that they would have to offer BLTS services in order to be eligible for TUSF funds.

In its reply comments, SWBT stated that there is no need for the commission to create special eligibility for wireless services for disbursements from the THCUSP as suggested by PrimeCo. SWBT further commented that if wireless service carriers take the necessary steps by offering service as the rules require and by obtaining a certificate as the rules also require, they will qualify for TUSF support, and that under no circumstances should the commission waive any of these requirements for wireless carriers. In SWBT's opinion, if CMRS providers are to be eligible for subsidies, they should be required to comply with the same eligibility criteria and rules as their competitors.

GTE contended likewise, that there is no validity to the claim that wireless providers are ineligible to draw from the TUSF. GTE claimed there is nothing in either PURA or the commission's rules which would preclude a wireless provider from seeking a CCN or COA and qualifying as an ETP. GTE asserted that the fact that a wireless carrier may not want to assume the obligations associated with obtaining such certification or submit to the jurisdiction of the commission does not mean that a wireless carrier is not eligible to receive funds from the TUSF. GTE opined that that is a business decision that a wireless carrier is free to make.

The commission declines to make the changes to §23.147(d)(1) requested by Sprint PCS, PrimeCo, and AT & T. The commission finds that PURA §56.021(1) and §56.023(a)(2) and (b) require that the commission's rules establishing a universal service fund must apply to LECs and must contain eligibility requirements for LECs only. The commission is not persuaded that the Act §332(c)(3)(A), as amended, has been violated by requiring mobile service providers to obtain a certificate and provide the supported services in order to be eligible for state universal service support. That section prohibits states from regulating CMRS rates and entry, but it permits states to regulate the terms and conditions under which CMRS is provided. Nothing in this section regulates the rates or entry of any CMRS provider; rather it prohibits a CMRS provider from being certified as an ETP unless it meets all of the qualifications for such certification, including obtaining a certificate as a CCN or COA holder and offering the supported services.

The commission finds that no technological discrimination occurs by denying TUSF eligibility to a carrier that otherwise meets the criteria of the Act §214(e), as amended. A carrier may be certified as an ETP if it meets the criteria, regardless of the technology used to deliver service. FTA §254(f) allows a state to adopt regulations not inconsistent with the FCC's rules to preserve and advance universal service. It further allows a state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal universal service support mechanisms. The commission finds that §23.147, which requires that a carrier be certified as a CCN or COA holder adopts additional standards to preserve and advance universal service within the state and that such standards do not rely on or burden federal universal service support mechanisms. Therefore, the commission finds that this section complies with the requirements of FTA §254.

Further, the commission finds no need to petition the FCC for a declaratory ruling regarding the validity of the certificate restriction imposed by PURA, because the commission finds no conflict with the Act.

The commission also declines at this time, based upon this record, to provide for a blanket good cause waiver for the wireless carriers for the provision of the supported services, because of the potential anti-competitive effects of such a waiver. The commission notes that it may be unfair to require one type of carrier to comply with one set of requirements and another type of carrier to comply with another in order to be eligible to be certified as an ETP; therefore, the commission declines to provide for a blanket good cause waiver in the rule for the situation described by PrimeCo.

TCG expressed concern that the definition of ETP provided in §23.133 and relied upon in §23.147 might be interpreted to exclude holders of SPCOAs from being recipients of TUSF. TCG stated that its concern stemmed from the ambiguous usage in PURA of the term "LEC," and from the reliance on "LEC" in the definition of the term "ETP." TCG noted that PURA §51.002(4) defines a LEC as a holder of a CCN or a COA. TCG urged the commission to confirm that, for purposes of these rules, the phrase "certificate of operating authority" necessarily includes holders of both SPCOAs and COAs because PURA clearly intends it to include both for the purposes of PURA §51.002(4). TCG further explained that this was clear from the explanation provided in the Public Utility Regulatory Act of 1995 (PURA95) §3.2531(b), which states that an application for a COA shall specify whether the applicant is seeking a facilities based COA under that section or an SPCOA under PURA95 §3.2532.

SWBT indicated in its reply comments that it considered unreasonable TCG's argument that it should be entitled to receive TUSF support even though it does not qualify. SWBT commented that there is no statutory basis for TCG's argument that the term "LEC" contained in the TUSF rule should include holders of both SPCOAs and COAs and insisted that the terms "COA" and "SPCOA" are not interchangeable. SWBT opined that PURA §52.151 refers to the two certificates separately; that PURA Chapter 54, Subchapters C and D also make clear that the term "COA" is not an acronym or shortening of the

term "SPCOA;" that PURA §54.001 also distinguishes between the two types of certificates; and that PURA §56.021 limits the commission's authority to implement a universal service plan to LECs. In SWBT's opinion, the plan can only be applicable to holders of CCNs and COAs, and this limitation should not be a problem for TCG and other companies like it who hold SPCOAs as the commission has previously waived the build-out requirements of PURA §54.104. SWBT further noted that the FCC has recently preempted the build-out requirements in FCC 97-346, *In the Matter of the Public Utility Commission of Texas; the Competition Policy Institute, IntelCom Group (USA), Inc., and ICG Telecom Group, Inc., AT & T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995;* therefore, an SPCOA holder can now more easily obtain a COA.

In their reply comments, TSTCI and TTA opposed TCG's position in favor of SPCOA holders receiving TUSF support, and emphasized "the self serving nature of TCG's argument." TTA added that the reason for distinguishing between a COA holder and an SPCOA holder for state USF purposes is that only the COA holder has the obligation to serve customers within its certificated service area and that this is an obviously necessary commitment for receipt of funds intended to advance universal service.

The commission disagrees with TCG that the term "COA" encompasses both "COA and SPCOAs." The commission finds that PURA sets forth the criteria for granting a COA and an SPCOA and that these are separate certificates with separate names. The commission agrees with TTA that a reason for distinguishing between a COA holder and an SPCOA holder for state USF purposes is that only the COA holder has the obligation to serve customers within its certificated service area and that this commitment is necessary for receipt of funds intended to advance universal service. Consistent with this interpretation, the commission confirms that only COA holders and CCN holders are eligible to be certified as ETPs.

TEXALTEL stated that the appropriate public policy is to allow SPCOAs to be eligible for TUSF funding and suggested that the commission look to the FTA for preemptive guidance.

As stated previously, PURA §56.021(1) and §56.023(a)(2) and (b) require that the commission's rules establishing a universal service fund must apply to LECs and must contain eligibility requirements for LECs only; therefore, the commission finds that SPCOAs are not eligible to be certified as ETPs. The commission finds that the FTA does not preempt the state law on this matter. FTA §254(f) allows a state to adopt regulations not inconsistent with the FCC's rules to preserve and advance universal service. It further allows a state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms. The commission agrees with TTA that a reason for distinguishing between a COA holder and an SPCOA holder for state USF purposes is that only the COA holder has the obligation to serve customers within its certificated service area and that this commitment is necessary for receipt of funds intended to advance universal service. The commission finds that §23.147, which requires that a carrier be certified as a CCN or COA holder, adopts additional standards to preserve and advance universal service within the state and that such standards do not rely on or burden federal universal service support mechanisms. Therefore, the commission finds that this section complies with the requirements of FTA §254.

TEXALTEL provided an alternative if the commission does not agree that SPCOAs should be eligible. TEXALTEL submitted that if an SPCOA is providing services that TUSF would fund for a COA or CCN holder, the SPCOA should be allowed to reduce its payment obligations into the TUSF by the subsidy amount such SPCOA would have received had it been allowed to receive TUSF support. TEXALTEL argued that this flexibility is within the commission's jurisdiction since it would not be permitting the SPCOA to draw from the TUSF, but would be encouraging SPCOAs to provide, on a limited basis, subsidized services where it made sense to do so. TEXALTEL further argued that SPCOAs are encouraged to serve certain high cost, small ILEC or rural consumers by virtue of being eligible for federal subsidies.

The commission rejects TEXALTEL's suggestion to reduce an SPCOA's contribution to the TUSF by amounts that it would have received had it been eligible to receive TUSF. The commission notes that such a provision would essentially negate the provisions of PURA §56.021(1) and §56.023(a)(2) and (b) and allow virtual certification as an ETP of an SPCOA holder, even when such SPCOA holder does not meet the requirements for certification. Also, the commission finds that any SPCOA desiring certification as an ETP is free to seek certification as a COA, thus becoming eligible to be certified as an ETP.

Section 23.147(d)(1)(B) requires a LEC to offer any customer in its ETP service area basic local telecommunications services at a rate not to exceed 150% of the ILEC's tariffed rate.

GTE opposed the rate ceiling of 150% of the ILEC's tariffed rate, considering it arbitrary, excessive and inconsistent with the commission's goal of ensuring universal service at "reasonable rates." GTE indicated that whatever requirement the commission places on the COLR's basic local service price must be the same for any COLR; therefore, a CLEC-ETP should not be able to charge a higher rate for supported services than the ILEC charges. GTE further stated that the terms of the COLR obligation should be specified in such a way that a COLR cannot evade its responsibly to serve any customer in an area. GTE commented that the rule allows ETPs to serve customers selectively while leaving less attractive customers to be served by others.

TTA objected to the proposed rule's allowing an ETP to charge a rate 1.5 times the ILEC's rate and still receive full TUSF funding. TTA argued that non-ILEC ETPs should not be permitted to charge premium local rates and receive TUSF. TTA stated that an ETP should be required to offer BLTS as a stand-alone service offering, at a rate not to exceed the applicable tariffed rate for BLTS of the ILEC serving the area where the customer resides.

OPC agreed with the ILECs that the price to be offered for basic service to the public must be no greater than the tariffed rate (or the affordability benchmark when that is determined). In OPC's opinion, to do otherwise would allow abusive marketing and would deny many members of the public the benefits of competition. OPC indicated its belief that the requirement to

be willing to serve all potential customers within the service territory is a crucial check on cherry picking and a vital step to protect the public interest, and this is particularly important because the rule would allow companies to define their own service territories.

In its reply comments, AT & T argued that the commission's scope of regulation over non-ILEC ETPs has been limited by the state Legislature through PURA §52.152. AT & T opined that TTA's suggestion for ordering carriers to offer a stand-alone service at a rate not to exceed that of the underlying ILEC is beyond the scope of the Universal Service Fund process and beyond the commission's jurisdiction.

The commission declines to make the revisions proposed by GTE, TTA, and OPC. The commission recognizes that CLECs most likely will offer various packages of service offerings and that the ILECs will do so as well. The commission confirms its opinion that an ETP should be required to offer BLTS as a stand-alone service offering at no higher than 150% of the ILEC's tariffed rate. The commission finds that this requirement will ensure that an ETP offers a basic service package attractive to the majority of customers, and it will prevent an ETP from offering only combined service packages that include toll and additional features at a higher price and that would be attractive to only a select group of customers. Further, the commission finds this requirement will prevent ETPs from evading their responsibilities to serve and will provide the needed check on cherry-picking.

The commission disagrees with AT & T that ordering carriers to offer a stand-alone service at a rate not to exceed that of the underlying ILEC is beyond the scope of the TUSF process and beyond the commission's jurisdiction. PURA §56.023(a)(2) gives the commission jurisdiction to adopt eligibility criteria for TUSF. The commission, however, agrees with AT & T that ETPs should not be limited by the underlying ILEC's rate. In order to address this issue, the commission has provided the CLEC ETPs with the flexibility to charge a rate not to exceed 150% of the ILEC's rate. The commission believes that requiring an ETP to provide the basic services at no higher than 150% of the ILEC's tariffed rate is appropriate and protects the public interest because it prevents new entrant ETPs from evading their obligation to serve while at the same time giving new entrant ETPs latitude in their service offerings. In any event, the commission is confident that the market will police the viability of service offerings priced in excess of prevailing rates.

Section 23.147(d)(1)(C) requires the LEC to offer basic local telecommunications services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

GTE suggested that the language in §23.147(d)(1)(C) be clarified as to the area in which facilities are to be employed. GTE argued that the rule should be revised to allow universal service funding only for those lines which use the ETP's own facilities or UNEs purchased from the underlying ILEC. TTA and SWBT commented that TUSF funding should be targeted to those CBGs and customers the ETP serves through its own facilities or through use of its own facilities and cost- based UNEs. TTA advised that the rule should explicitly state that receipt of THCUSP funds is only possible as to customers served by the carrier's own facilities or through the purchase of cost-based unbundled network elements.

TTA noted that the proposed rule does not clearly require an ETP to have facilities in each CBG in which it seeks TUSF eligibility. TTA asserted that a carrier providing service solely through resale in a CBG should not be eligible for TUSF funding in that CBG, nor should a carrier receive funding for any individual customer served wholly through resold facilities. GTE argued that LECs should use facilities or a combination of facilities and resale in each high cost service area of which they are requesting universal service support.

In its reply comments, TCG urged the commission to reject SWBT's proposal to limit eligible telecommunications carriers to those which provide service over a combination of their own facilities and the resale of cost-based unbundled network elements. According to TCG, the Act §214(e)(1)(A), as amended, allows eligible telecommunications carriers to provide service through a combination of their own facilities and resale of another carrier's services.

The commission declines to revise §23.147(d)(1)(C) as requested by GTE, TTA, and SWBT. The commission notes that this subsection sets forth the criteria for certification as an ETP, and the commission finds that LECs providing service through a combination of their own facilities, which includes the use of purchased UNEs, and resale of another carrier's services are eligible to be certified. An ETP may serve customers in any combination; however, the ETP shall only receive support for lines served other than through total service resale. The commission notes that this section sets forth the requirements for certification as an ETP, but does not set forth the requirements for the lines for which an ETP may receive support, and that §23.133 and §23.134 set forth those requirements.

Section 23.147(d)(1)(D) requires that the LEC render continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §23.61 of this title (relating to Telephone Utilities).

MCI argued that the commission should not extend its quality of service requirements to non- dominant LECs as proposed in §23.147(d)(1). MCI opined that it would be unnecessary to do so because new entrants will keep quality of service high and many of the quality of service provisions of §23.61 do not apply to non-dominant LECs.

In its reply comments, SWBT argued against MCI's position that it should not be required to meet the commission's quality of service requirements. SWBT further commented that the only fair requirement if the commission continues to apply quality of service requirements to ILECs is that their competitors must be required to adhere to the same requirements. In its reply comments, GTE contended that if MCI wishes non-dominant LECs to be able to draw from the TUSF, they should be willing to shoulder an equivalent obligation to provide Texas consumers with a minimum level of service quality. In GTE's opinion, adoption of MCI's suggestion would not only be discriminatory on its face, but would turn on its head the universal service goal of available and comparable services.

In its reply comments, Sprint agreed with MCI that the commission's quality of service requirements should not apply to non-dominant LECs. However, Sprint indicated that it is not clear whether proposed §23.147(d)(1)(D) would have that effect. Sprint stated that §23.61 apparently recognizes that minimum standards are not necessary for non-dominant providers, since their service quality will be dictated by competitive pressures,

and consequently imposes service objectives and surveillance levels on Dominant Certificated Telecommunications Utilities (DCTUs). Sprint interpreted the proposed rule as not imposing the §23.61 standards on non-DCTUs. Since MCI and TTA have read otherwise, Sprint noted that §23.147 should be clarified to require compliance with service standards defined in §23.61 only if a LEC is a DCTU.

The commission finds that, in order to qualify as an ETP, a LEC must comply with the commission's quality of service rules as set forth in §23.61(c), (d), and (e), and revises §23.147(d)(1)(D) and (g)(1)(B)(i)(V) accordingly. PURA §56.023(b) provides that eligibility criteria for receiving TUSF support must include LEC compliance with the commission's quality of service requirements. The commission notes that §23.61(c), relating to emergency operation; (d), relating to inspection and tests; and (e), relating to service objectives and surveillance levels, all set forth quality of service standards that are appropriate for all ETPs to follow as required by PURA §56.023(b). This requirement will ensure a minimum standard of service that will provide appropriate customer protection in a competitive market in return for an ETP's receiving TUSF support.

Sprint PCS noted that because additional eligibility criteria disadvantage CMRS carriers as compared to incumbent wireline carriers, and favor wireline over wireless technology, they violate the principle of competitive neutrality required by FTA §253(b) and the FCC's Universal Service Order, and the principle of comparable access established by FTA §254(b). Sprint PCS opined that additional eligibility criteria are not necessary to satisfy the requirement of FTA §253(b), because adequate consumer protection is afforded by the Act §214(e), as amended.

The commission finds that no technological discrimination occurs by denying TUSF eligibility to a carrier that otherwise meets the criteria of FTA §214(e), as amended. A carrier may be certified as an ETP if it meets the eligibility criteria, regardless of the technology used to deliver service. FTA §254(f) allows a state to adopt regulations not inconsistent with the FCC's rules to preserve and advance universal service. It further allows a state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal universal service support mechanisms. The commission finds that §23.147, which requires that a carrier be certified as a CCN or COA holder, adopts additional standards to preserve and advance universal service within the state and that such standards do not rely on or burden Federal universal service support mechanisms. Therefore, the commission finds that this section complies with the requirements of FTA §254.

TTA noted that, while the proposed rule required some minimum service obligations for non-ILEC ETPs, it omitted some significant service obligations that the ILEC is required to meet, e.g., §23.6, Spanish Language Requirements; §23.24, Form and Filing of Tariffs; §23.32, Automatic Dial Announcing Devices; §23.33, Telephone Solicitation; §23.40, Prepaid Local Telephone Service; §23.41, Customer Relations (boundary maps, tariff available, etc.); §23.42, Refusal of Service; §23.43, Applicant and Customer Deposit (interest rate and refunding of deposits); §23.44(c),(d), New construction (line extension and construction; response to request for service); §23.45, Billing (Information on bill, overbilling, payment plans); §23.46, Discontinuance of Service (Holidays, notice, disputes); §23.48, Continuity of Service (Emergency Operations Plan); §23.49, Extended Area Service - to extent of subsection (c): ELCS; §23.54, Pay Telephone Service - applies to certified telecommunications utilities; §23.55, Operator Services; §23.56, Statewide Dual-Party Relay Service; §23.57, Telecommunications Privacy; §23.58, Pay-per-call Information Services Call Blocking (900 and 976) for BLTS; §23.93, Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications (Discounts to Schools and Libraries); §23.96, Telephone Directories; and §23.97, Interconnection. Asserting that all ETPs should be held to the same standard of service for basic local telecommunications services to be eligible for state USF funding, TTA recommended revising §23.147(d)(1)(D) to include all the obligations identified above.

In its reply comments, AT & T stated that the commission's scope of regulation over non-ILEC ETPs has been limited by the state Legislature through PURA §52.152. AT & T argued that TTA's suggestion to make ILEC rules applicable to non-ILECs is beyond the scope of the Universal Service Fund process and beyond the commission's jurisdiction. Sprint opposed TTA's proposals to expand the proposed rule to impose other requirements on competitive providers.

The commission does not revise the section as requested by TTA because the commission finds that the quality of service standards set forth in §23.61 (c), (d), and (e) are the appropriate standards that all ETPs must follow. Further, the commission finds that it is reasonable, at this time, for the additional standards cited by TTA to be required of the ILECs but not non-ILEC ETPs because the ILECs are dominant carriers. Because dominant carriers possess market power in a given geographic area with respect to basic local telecommunications service, the commission finds that it is in the public interest to protect customers by requiring such dominant carriers to adhere to standards in addition to the quality of service standards required for certification as an ETP. While the commission declines to revise the section as proposed by TTA, it disagrees with AT & T's assertion that requiring non-ILECs to adhere to rules for ILECs is beyond the scope of the Universal Service Fund process and beyond the commission's jurisdiction. PURA §56.023(a)(2) gives the commission jurisdiction to adopt eligibility criteria for the TUSF, and provides that the commission may adopt the eligibility requirements that it deems appropriate.

Section 23.147(d)(2) sets forth additional criteria that must be met by an ILEC for qualification as an ETP. As proposed, §23.147(d)(2)(A) and (B) required an ILEC regulated under PURA Chapters 58 or 59 to reduce CCL and RIC rates, and toll rates to an amount equal to the support amount the ILEC is to receive under §23.147. The commission requested that parties comment on whether the application of 60% of the THCUSP support amount to CCL and RIC rates and 40% of the THCUSP support amount to toll rates, as proposed in §23.147(d)(2)(A) and (B), reflects the respective amount of implicit support attributable to BLTS from interLATA and intraLATA telecommunications service. The commission also requested comment on whether there should be a distinction between originating and terminating access charges. The commission asked commenters to consider customer calling patterns and any other measurable indicator of network usage in their responses.

Various parties offered general comments regarding access charge reductions as well as specific comments regarding the percentage split proposal, alternatives to the split proposal,

whether the commission should distinguish between originating and terminating access charges for any access charge reductions, and treatment of UNEs.

MCI argued that the universal service support should be explicitly funded in its entirety and that access charges should be immediately reduced to their economic costs. In its reply comments, MCI contended that the commission should lower access charges to economic cost so that Texas consumers can benefit from lower long distance bills. MCI argued that to do otherwise would allow ILECs to keep monopoly rents for access to their local networks in addition to the explicit and sufficient funding for their universal service requirements.

CU objected to linking access and universal service and stated that it was poor public policy to make the TUSF a dollar-for-dollar replacement pool for access charge reductions, since studies have shown that access charges are far above cost even assuming that a small portion of access has been used to subsidize basic service. CU noted that the FCC lowered access services by billions of dollars without requiring those dollars to be made up through the FUSF.

The commission agrees with MCI that universal service support should be explicitly funded in its entirety and the commission finds that this proceeding, along with the required compliance proceedings, moves toward accomplishing that result. In response to MCI and CU, the commission notes that access charge revisions are an issue in this proceeding only to the extent that access charge and intraLATA toll rates may be reduced in order to effectuate a reduction in revenues commensurate with the amount of THCUSP received by ILECs. This is necessary in order to prevent a windfall to the ILECs that they would otherwise receive if THCUSP support and the revenues from existing access charge, intraLATA toll rates, or other rates were collectively received.

The following paragraphs summarize the parties' comments on the percentage split proposal and whether the commission should distinguish between originating and terminating access charges for any access charge reductions.

MCI did not agree with the concept of revenue neutrality and opposed the "arbitrary" 60/40 percent allocation of the reductions between access and intraLATA toll rates. MCI stated that as a transition to cost-based access rates, the commission should allocate 100% of the rate reductions to access, or alternatively decide this matter in the context of the upcoming proceeding to determine costs by CBG and benchmarks.

AT & T indicated that the 60/40 split is arbitrary because it is not based on any empirical data. AT & T stated that the commission needs to distinguish between access charges and intraLATA toll rates: access charges are monopoly segments of the industry, while intraLATA 1+ dialing will become more competitive. AT & T further commented that access charges are monopoly elements and that IXCs have no choice in deciding whether to use a non-ILEC for originating and/or terminating access. AT & T supported a reduction in access rates equal to 100% of an ETP ILEC's THCUSP support rather than a reduction in intraLATA toll because it encourages competition. AT & T opined that access charges stifle competition and are an implicit subsidy and that its proposal would also benefit customers because access charges are major expenses for toll carriers for both inter and intraLATA toll rates.

In its reply comments, GTE countered MCI and AT & T's proposal to apply the entire TUSF reduction to access charges by stating that reducing access alone would result in driving access rates well below cost. GTE conjectured that access service would itself become a subsidized service. GTE further argued that if access reductions were imputed to toll, the rate decreases would vastly exceed the amount of support provided by the fund, violating the revenue neutrality principle implicit in the rules. GTE maintained that the application of universal rate reductions must mirror the current company-specific mix of support levels in each company's unique rate structure. GTE stated that an arbitrary industry-wide reduction scheme, whether 60/40 or 100% to access, will necessarily drive some companies' rates for some services below cost while leaving rates for other services artificially inflated.

In its reply comments, SWBT characterized AT & T and MCI's argument that 100% of the reductions resulting from receipt of the TUSF support by ILECs be allocated to switched access as self-serving. SWBT argued that allocating the rate reductions only to access will enable the IXCs to have a competitive advantage over the ILECs for intraLATA toll because the IXCs' cost of providing their toll service will have been reduced. LECs would have to reduce their intraLATA toll rates to remain competitive. SWBT commented that because intraLATA toll is one of the major contributors to universal service, making the reduction as AT & T and MCI argue will cause the loss of that universal service contribution without replacement from the TUSF.

In its reply comments, TTA characterized MCI and AT & T's proposals for no reductions to toll rates as self-serving, and urged the commission to reject them.

With regard to the 60/40 split proposal, SWBT stated that the percentages neither reflect the split of the overall intrastate access and toll revenues or usage, nor the split of the implicit revenue that each service provides to support reasonably priced local exchange rates for SWBT's customers in Texas. SWBT reported that the 1996 proportions of booked revenue were 70% to access, and 30% for intraLATA toll; access/toll usage 75% to access, and 25% to intraLATA toll; and the implicit support 76% from access and 24% from intraLATA toll.

TEXALTEL agreed that a 60/40 split would create some undesirable aberrations, because the ratio of traffic between ILECs varies greatly. TEXALTEL noted that some ILECs may have almost no intraLATA traffic while others may have 80% or more of their toll traffic within the LATA. TEXALTEL noted that parties raised many good arguments that TUSF receipts should be exclusively devoted to access reductions have already been stated. TEXALTEL added to those arguments by stating that some ILECs have very substantial portions of their intraLATA traffic in the short distance bands and that for these ILECs the average intraLATA toll revenues per minute may already be at or below access rates. TEXALTEL suggested that, before any ILEC is permitted to reduce intraLATA toll rates, it must examine its average toll revenue per minute and show that such revenue exceeds its access rates by enough of a margin to cover non-access costs, such as transport, billing, and marketing. TEXALTEL further suggested a default of $.03 for transport, billing and marketing for those ILECs who do not wish to compute this cost and that if an ILEC's average toll revenue per minute is more than $.03 above its access charges, the commission could permit the same average price reduction in toll as it does for access.

TTA opined that it was not possible to evaluate the reasonableness of a percentage-based allocation without knowing the dollars available for reductions. If the TUSF fund is large, a 40% allocation to intraLATA toll may be too much. TTA proposed that this section be redrafted to permit reductions to intraLATA toll rates to a competitive level, with the remaining dollars to fund reductions to access rates, and with a waiver permitted for companies for whom this method proves unreasonable.

TCG argued that §23.147(d)(2)(A) is unnecessary if the benchmark described in §23.133(e)(1)(B) already includes revenues from these rate elements.

GTE opposed the limitation of universal service rate reductions to toll and access services. GTE also opposed the application of a fixed percentage to all carriers. GTE asserted that it is not possible to assess the reasonableness of any rate reduction distribution without knowing the size of the fund.

OPC declared that it took no position on the appropriateness of the 60/40 split as an interim basis, but recommended that the commission ultimately base access charges on an analysis of costs, and a fair allocation of joint and common costs (including loop costs) to all services which use network facilities. OPC argued that although the commission proposes to have the entirety of universal service funds reflected in access charge and toll reduction, it should recognize that it may become necessary to recalibrate this reduction after development of the cost models. In particular, other services which share facilities (e.g., vertical services) may be due rate reductions as well, if the commission finds that the mark-up on these services is excessive after all joint and common costs are taken into account.

Regarding OPC's analysis of loop costs, SWBT indicated that the important issue is not the allocation of the costs based on customer usage, but, in the face of competition in high-volume urban areas, how to maintain that support. SWBT stated that OPC's proposal to allocate loop costs is simply a method to continue the discriminatory recovery of universal service support in toll and access rates of LECs and should be rejected. SWBT responded that OPC's argument that the commission should require rate reductions of vertical services is misplaced. SWBT stated that if the support to basic local services were reflected in the level of the TUSF and the benchmark were established at the local tariffed rate level, then reductions to vertical service rates could occur but only because the size of the net TUSF increased substantially. If the support implicit in toll and access rates can be dealt with in a TUSF and a more moderate surcharge established, SWBT is willing to attempt to manage the support for basic local rates implicit in vertical service rates.

TTA expressed concern that OPC's comments about revising rates after the cost models are developed might lead the commission to do so without making the corresponding changes to the benchmark itself. TTA warned against adjusting one of the inputs without readjusting the TUSF mechanism as a whole.

Sprint argued that the more economically based solution is for the ILEC to use the TUSF support to first move switched access rates closer to their forward-looking economic costs by reducing CCL and RIC rates paid by IXCs. Sprint stated that the reductions to intraLATA toll rates should be limited to the CCL and RIC rates that the ILECs impute to their own intraLATA toll rates. SWBT stated that the intent of Sprint's argument was unclear. SWBT asserted that if Sprint meant that implicit support in toll rates, which support local exchange loop costs to allow for low local rates and high cost transport (like the access CCL and RIC elements), then SWBT would agree that the TUSF should be used to effectuate a proportionate reduction in intraLATA toll support.

GTE opposed Sprint's imputation proposal in its reply comments. GTE argued that the amount of toll and access will vary between companies and that the proposal ignored the fact that non- imputed rates such as discretionary, business, and basic services in low-cost areas also provide support. GTE argued that the imputation itself would leave a large portion of current supports implicit, in violation of the FTA.

Alternatively, AT & T advocated splitting the THCUSP based on intraLATA access minutes of use, which is information the commission already requires of ILECs. With this information, in AT & T's opinion, the commission can determine the level of reduction generated by the TUSF and then calculate the amount per access and equivalent access minutes of use.

TTA opposed as unworkable AT & T's proposed calculation netting minutes of use against a credit based on dollars, then netting by another calculation based on revenues.

In its reply comments, Sprint indicated that its recommendation for access and toll reductions appears to be the same as AT & T's alternative proposal. Sprint indicated that its proposal, to make equal reductions in the per minute rates for access and intraLATA toll services, is the most rational and economically sound plan. Sprint argued that such a method most fairly reflects the historical use of subsidies from intraLATA toll and switched access rates to support BLTS and that equal reductions to switched access charges and the access amounts imputed to intraLATA toll services will encourage competition in both markets without providing an undue competitive advantage to any set of providers. Sprint indicated that it was uncertain why AT & T included a calculation of the ratio of access minutes and intraLATA access equivalent toll minutes. Sprint stated it would be simpler to sum the total access and access equivalent minutes and divide those total minutes by the TUSF amount to arrive at a cents per minute reduction.

In response to these comments, the commission revises §23.147(d)(2) to eliminate the specific reduction percentages of 60% to access and 40% to toll. The commission reiterates that an ILEC- ETP must reduce existing revenues by an amount equal to the amount it will receive from the THCUSP or agree to reduce its THCUSP receipts by certain existing revenue streams. This prevents an ILEC-ETP from receiving a windfall. The commission will address the reduction in rates in the compliance proceedings in which the commission determines the forward looking economic cost and the revenue benchmark. The commission finds that the compliance proceedings are the appropriate forums in which to determine which specific rates should be reduced and in what proportions. The commission revises §23.147(d)(2) accordingly.

AT & T argued that the entirety of access charge reductions should be made to terminating access first. AT & T contended that local competition will drive down prices for originating charges because new entrants will gain access to UNEs at cost-based rates and pay no access charges to ILECs to originate toll calls for the new entrant's customers. AT & T also proposed that CCL and RIC should be decreased first for terminating and then for originating access charges.

In its reply comments, Sprint stated that it agreed with AT & T and other parties that there should be definite priorities in the order in which reductions are made to the components of access charges. Sprint said it would support AT & T's suggestion that the priorities should be to first totally eliminate terminating access components and then reduce the originating CCL and RIC. Sprint noted that the access charges for services which are the most unlikely to face competitive pressures should be the first targets for reduction and elimination. Accordingly, Sprint recommended that the commission mandate decreases to terminating access before providing for reductions to originating access.

SWBT stated that the commission does not need to make any special distinction between originating and terminating access charges.

The commission makes no findings in this proceeding regarding whether the commission should distinguish between originating and terminating access charges for any access charge reductions. The commission will address the issue in the compliance proceedings in which the commission determines the forward looking economic cost and the revenue benchmark.

In its reply comments, SWBT argued that in order to ensure competitively neutral recovery of universal service support from all competitors until a TUSF sufficient to remove all support implicit in SWBT's access and toll rates is adopted in Texas, CCL and RIC should be charged to all providers of interexchange calling, including purchasers of UNEs. SWBT argued that unless the commission allows this to occur beyond December 31, 1997, and if the TUSF is not sufficient to eliminate all access and toll implicit support, the LECs will continue to bear a discriminatory support burden in their access and toll rates as compared to purchasers of UNEs.

The commission does not revise the rules in response to SWBT's comment. The issue of whether the CCL and RIC should be charged to all providers of interexchange calling, including purchasers of UNEs, after December 31, 1997, was not decided by the commission in this proceeding. The commission finds that this issue is particular to interconnection agreements between SWBT and specific parties. Therefore, the commission believes that it is inappropriate to address this issue in this proceeding.

Section 23.147(d)(2)(A) and (B) indicate that ILEC receipt of THCUSP support is conditioned on reductions in access rates and toll rates. The commission sought comment on the jurisdictional limitations with respect to (a) the conditioning of ILEC receipt of TUSF support on the reduction of any set rates and (b) the requirement of proof from the IXCs that they have indeed passed savings from access rate reduction through to all end user customers.

GTE, MCI, OPC, Sprint, SWBT, and TTA indicated that the commission does have authority to condition ILEC receipt of TUSF support to the reduction of certain rates.

MCI stated that this position is based on the commission's rate-setting authority over ILECs and its authority to encourage the development of competition in the local market.

In support of its position on commission authority over ILECs, OPC cited FTA §254(e) and PURA §56.021, both of which define the purpose of universal service support. OPC argued that a company that receives universal service support in place of access charge reductions, but then fails to effectuate the access charge reduction, would not be using the support for the intended purpose.

TTA responded that the commission can condition receipt of THCUSP support to a reduction of rates by making the reduction a condition of eligibility and by making participation in THCUSP support voluntary, and that ILECs will then opt in or not depending on whether receipt of TUSF support is better than maintaining access or other rates at current rate levels.

The commission concurs with the commenters that it does have authority to condition ILEC receipt of TUSF support to the reduction of certain rates and retains this requirement in §23.147.

In addition, TTA commented that if mandatory rate reductions are a condition of THCUSP eligibility, they should be accomplished on a revenue neutral basis, for TTA understands that §23.133 is intended to be revenue neutral; however, the required reductions should not be a part of the §23.134 plan, as TUSF funds under that section replace existing revenue streams and do not create new revenues as under the THCUSP, absent offsetting rate reductions.

The commission agrees with TTA's understanding that the reductions addressed in §23.147(d)(2)(A) and (B) apply to THCUSP as provided in §23.133.

GTE, MCI, Sprint, SWBT, TTA, and AT & T agreed that the commission's authority over IXCs is limited to the filing of reports. OPC was the exception, indicating that it believes that the commission has authority over IXCs.

AT & T opined that the commission does not have the authority to require IXCs to pass through access charge reductions or to direct that the reduction redound to the benefit of certain customer classes. AT & T also stated that the commission does have the power to require reports from telecommunication utilities pursuant to PURA §52.102(3).

MCI stated that the commission does not have rate-setting authority over non-dominant carriers (including IXCs). MCI stated that the commission may require registration, maintenance of statewide average rates, certain quality of service standards, access requirements, and the filing of reports. MCI postulated that competition will ultimately drive down costs when access reductions materialize. In its reply comments, MCI pledged to flow through all access charge reductions (net of FUSF obligations) to consumers and committed to voluntarily reporting those reductions to the commission.

Sprint argued that the commission has no authority to require a pass-through of reductions; however, pursuant to PURA §§52.101, 52.102, and 52.104 - 52.106, IXCs may be required to report whether they have in fact passed on the savings. Sprint suggested that such reports should only be required if the commission has reason to believe that an IXC has not passed through the reduction.

SWBT stated that PURA §52.102 sharply limits the commission's authority over IXCs, but that PURA §52.102(3) permits the commission to require IXCs to file reports which affirmatively state the price reductions which IXCs have passed through to their customers. SWBT further stated that the commission could condition receipt of TUSF funds on an IXC's making the necessary rate reductions.

TTA agreed that PURA §52.102(3) would permit the commission to require IXCs to file reports which could be used to require

IXCs to report the price reductions, if any, which IXCs have adopted. TTA noted that such a report would at least give the commission a means to identify those IXCs which have or have not passed access reductions through to their customers. In its reply comments, TTA suggested revising the rule to require IXCs seeking ETP status to report the total access reductions received, as well as both the specific long distance rates reduced and the revenue impact of those rate reductions, as a condition of receiving universal service support.

OPC argued that the commission does have authority to require the IXCs to provide proof that they have passed through access charge rate reductions, but recommended that the commission delete the proposed access charge rate reductions if it believed it lacked the authority, or if challenged by the IXC industry. OPC recommended incorporating proof of the pass-through in the reports that IXCs are required to make to the TUSF administrator, so that failure to make the pass- through could be considered a failure to make a contribution to the TUSF.

GTE asserted that in a properly constructed universal service plan, the commission would not need to guarantee that access reductions are passed through to end users, and that the market would dictate the proper rate for all services.

On October 23, 1997, MCI filed and on November 7, 1997, AT & T also filed a letter pledging to flow through any access charge reduction that might result from the establishment of the TUSF. On November 7, 1997, MCI, AT & T, and Sprint filed a letter with the commission outlining their commitment to provide meaningful information regarding a showing that the access charge reductions resulting from the establishment of the TUSF are passed through to customers of long distance services.

The commission makes no findings regarding this issue in this proceeding. The commission will address the issue in the compliance proceedings in which the commission determines the forward looking economic cost and the revenue benchmark.

Section 23.147(d)(2)(A) requires that an ETP that is an ILEC electing incentive regulation must show that it will reduce rates of its services in order to avoid receiving a windfall upon the implementation of the THCUSP.

MCI contended that the commission should revise §23.147(d)(2)(A) to require eligible ILECs to reduce access and toll rates before they are eligible to receive THCUSP funding.

The commission agrees with MCI that §23.147(d)(2)(A)(i) should be revised to require that an electing ILEC shall actually reduce rates rather than provide evidence that it will reduce rates. As noted above, the commission revises §23.147(d)(2)(A) and (B) by deleting the reference to reductions to toll and access rates and adding that the reductions should be made to rates as ordered by the commission. The commission believes that because certain electing ILECs will be receiving state high cost support for the first time upon implementation of these rules, that it is imperative that the commission ensure that such ILECs do not receive these funds without reducing rates commensurately.

Section 23.147(e) sets forth the criteria for designating more than one ETP in a service area.

Sprint PCS noted that §23.147(e)(2) and §23.148(e)(2) require the commission to make a public interest finding before designating an additional eligible carrier in an area served by a rural telephone company. Sprint PCS further noted that the FTA additionally requires that additional designations be "consistent with the public interest, convenience, and necessity," then counseled the commission to adopt additional rules specifying the principles it will apply in making these findings, in order to avert expensive and time-consuming litigation by incumbent carriers to protect their position. Sprint PCS recommended creating two presumptions: that consumer choice is in the public interest, and that the deployment of new telecommunications technologies in rural areas is consistent with the public interest, convenience, and necessity; it also offered revisions for this purpose.

TTA pointed out that the proposed rule applies only an undefined "public interest" test in determining whether to designate an additional carrier, and advocated applying the minimum standards of §23.147(c) and expanding the public interest test to include the legislatively mandated criteria for facility-based certificates in areas served by a small or rural ILEC. TTA also opposed Sprint PCS' recommendation for a presumption with respect to the public interest test, opining that the new language would neither sufficiently clarify the test as to reduce litigation, as Sprint had argued, nor would it ensure that the low income, high cost customer that universal service is intended to benefit would indeed benefit.

The commission declines to revise §23.147(e)(2) or §23.148(e)(2) to specify the principles it will apply in making the findings required by these sections. The commission believes that these issues are better addressed in a subsequent proceeding.

Section 23.147(f) addresses the proceedings needed to designate LECs as ETPs. Pursuant to subsection (f)(2)(B) as published, an ETP acquiring exchanges from an unaffiliated provider must file an application to amend its ETP service area to include those exchanges that are eligible for support.

The commission revises §23.147(f)(2)(B) to clarify that the ETP must amend its ETP service area to include those geographic areas that are eligible for support, rather than the exchanges, because the ETP service area may be less than an exchange.

Section 23.147(g) sets forth the requirements for an application for ETP designation and commission processing of the application.

MCI proposed deleting the direct notice provision in §23.147(g)(1)(A). MCI said that LECs, especially ILECs, are already aware of new entrants and do not need direct notice.

The commission agrees that direct notice to all LECs providing service within the service area may be unnecessary in the state certification process. Therefore, the commission revises §23.147(g)(1)(A) to eliminate the mandatory requirement of direct notice to all LECs and to add the requirement that, at a minimum, notice shall be provided in the *Texas Register* and to state that the presiding officer may require additional notice.

TCG contended that §23.147(g)(1)(B)(i)(II) should be modified, consistent with the terminology in the rest of this section, so that a carrier need only show that it "offers" rather than "provides" federally supported services.

The commission revises the section as requested by TCG in order to achieve consistency with the rest of the section.

SWBT opined that §23.147(g)(1)(B)(i)(IV) needs to be tightened so that carriers cannot manipulate the system by providing one customer with service by their own facilities or unbundled network elements and then can obtain universal service support for customers served by resale.

The commission declines to revise §23.147(g)(1)(B)(i)(IV) as requested by SWBT. The commission notes that this subsection sets forth the criteria for filing for certification as an ETP, and the commission finds that LECs providing service through a combination of their own facilities, which includes the use of purchased UNEs, and resale of another carrier's services are eligible to be certified. An ETP may serve customers in any combination; however, the ETP shall only receive support for lines served other than through total service resale. The commission notes that this section does not set forth the lines for which an ETP may receive support and that §23.133 and §23.134 set forth those requirements.

Section 23.147(h) sets forth the process under which an ETP may relinquish the ETP designation.

TTA questioned whether the commission had the authority to designate a carrier as an ETP in an area if the carrier objected to the designation, and opined that neither PURA nor FTA conferred such authority. To address this problem, TTA recommended revising §23.147(h)(2)(B) to permit designation of a new ETP through the auction process.

The commission revises §23.147(h)(2)(B) to clarify that the commission will designate a new ETP through the auction procedure set forth in §23.147(i).

Section 23.147(i) sets forth an auction procedure for replacing the sole ETP in a service area. The commission asked commenters if, in light of the PURA §54.251(b) requirement that CCN holders have the provider of last resort obligations, it would be necessary for the commission to include in this rule a provision to replace the sole ETP in a service area.

OPC answered yes, it is necessary to include this provision in the rule, hypothesizing that a company could be designated a provider of last resort without also being designated an ETP. OPC argued that at least one entity in each area should be designated as both an ETP and an eligible telecommunications carrier as a matter of public policy, because "it is highly unlikely that universal coverage of the state would be maintained without this support."

SWBT indicated that subsection (i) should be retained since the service areas of CCN holders does not cover the whole state. TTA advised the commission to include proposed §23.147(i) in its rules, noting that PURA requires a CCN holder to provide BLTS throughout its certificated service area. However, TTA noted that an ILEC has the option to seek ETP eligibility and receive TUSF for meeting its responsibility as an ETP. Thus, in TTA's opinion, the CCN holder may or may not be an ETP for an area within its certificated service area, although it is unlikely that a CCN holder would not seek ETP eligibility in its high cost areas. Further, TTA commented that under PURA §54.252(a), the commission may authorize a CCN holder to discontinue or reduce service to an area if it finds that neither the present nor future convenience and necessity will be adversely affected, and that PURA §54.252(b) then authorizes the commission to prescribe the conditions, limitations, and restrictions applicable to such a change in a CCN. TTA noted that the auction procedure contained in the rules provides a mechanism that would permit the commission to designate an entity other than the CCN holder as the ETP for an area if the CCN holder applied to exit a service area or to relinquish its ETP status. TTA voiced its support for the auction procedure, on the grounds that it tended to equalize the playing field for CCN holders and other LECs seeking the benefit of TUSF support. TTA stated that if a non-CCN LEC can get TUSF support but exit the market at will, incentives are created to "game" the TUSF process, but if, on the other hand, any ETP can potentially become the sole ETP in an area, these incentives are reduced.

GTE stated that it does not believe that PURA prohibits an ILEC from relinquishing ETP status in a specific high cost area. GTE further stated that a company can relinquish its ETP designation in a specific high cost area of its service territory without abandoning its COLR responsibilities.

AT & T stated that it is not necessary to include a rule to replace the sole ETP in a service area given the PURA requirements with which providers of last resort must comply. MCI indicated that such a provision would be academic at this time.

The commission agrees with OPC, SWBT, and TTA that §23.147(i) should be retained in the rule and disagrees with AT & T and MCI that this provision is not needed at this time. Further, the commission agrees with GTE that an ILEC can relinquish its ETP status without abandoning its COLR responsibilities. Subsection (i) sets forth a process to allow the sole ETP in an area to relinquish its designation and to allow the commission to designate a new ETP for such area. The commission agrees with TTA that this process could be a first step to allowing an ILEC to exit a service area.

Sprint suggested revising §23.147(i) to prohibit the current ETP from bidding to become the new ETP. Sprint expressed concern that the current sole ETP could withdraw from an area and then be the only or lowest bidder in the auction for that area. In Sprint's opinion this process would simply raise the amount of support to the current ETP. Sprint argued that an ETP may use the system to its benefit by maintaining the competitive advantage it already controls by virtue of the infrastructure it already has in place in high cost areas. TCG also argued that a LEC that has sought to relinquish its ETP designation when it is the sole ETP should be disqualified from bidding to be the ETP in the relinquished area. In its reply comments, TTA advocated rejecting Sprint's proposal to revise the rule to prohibit the current ETP from bidding to become the new ETP. TTA argued that no incumbent ETP would exit a service area where it holds a competitive advantage, as Sprint hypothesized.

The commission does not revise subsection (i) as suggested by Sprint and TCG to prohibit the current ETP from bidding to become the new ETP. However, the commission recognizes the concerns raised by Sprint and TCG. If the situation occurs where an existing sole ETP, who is also a CCN holder with COLR responsibilities, desires to withdraw from an area the commission will consider the concerns raised.

Section 23.148 sets forth the requirements for designation of common carriers as eligible telecommunications carriers to receive federal universal service funds.

Section 23.148(c) sets forth the criteria for determination of eligible telecommunications carriers, and subsection (d) sets forth the criteria for determination of receipt of federal universal service support.

TSTCI commented that proposed §23.148(d)(2) defines eligible telecommunications carriers for the purposes of §23.142, and implies that offering Lifeline service is a prerequisite for becoming an eligible telecommunications carrier. However, TSTCI notes that federal universal service fund eligibility is based on offering the services set out by 47 C.F.R. §54.201, which does not include Lifeline. TSTCI recommended amending the rule to clarify that while eligible telecommunications carriers must offer Lifeline and Link Up services, such offerings are not a prerequisite for being certified as an eligible telecommunications carrier.

The commission declines to make the changes requested by TSTCI because the commission believes that the section does not need clarification. Section 23.148(c), which sets forth the criteria for determination of eligible telecommunications carriers, does not require that a common carrier offer Lifeline Service in order to be eligible to receive federal universal service support. Section 23.148(d), which sets forth the criteria for determination of receipt of federal universal service support, does require a common carrier to provide Lifeline Service before such common carrier may receive federal universal service support. Further, the commission notes that as a practical matter, a common carrier must satisfy the requirements of both subsections (c) and (d) before it may receive federal universal service support.

TTA noted that there were motions for reconsideration pending before the FCC with respect to the current federal Lifeline program toll control requirements as set forth in subsection (d), and recommended close monitoring of the proposed provision in the event that the FCC modifies its rules with respect to toll control.

The commission will monitor the developments at the FCC regarding this issue and will review the necessity for revisions to this section.

TTA advocated consistency with proposed §23.142(d)(1)(B)(ii) of the Lifeline rule, which permits waiver of the toll limitation requirements, and recommended amending §23.148(d)(3) and (g)(1)(C)(iii) to accomplish this result.

The commission finds it unnecessary to make the revisions requested by TTA because this section is consistent with §23.142. Section 23.142(d)(1)(B)(ii) allows a waiver to the toll limitation requirements that is consistent with the federal requirements. Sections §23.148(d)(3) and (g)(1)(C)(iii) refer to 47 C.F.R. §54.400, regarding terms and conditions, and §54.401, defining Lifeline. Section 54.401(3) includes in Lifeline service the services enumerated in §54.101(a)(1)-(9), and toll limitation is included in this list. Section 54.101(c) sets forth requirements for waivers to the provision of certain services enumerated in §54.101(a)(1)-(9), including toll limitation. The commission determines that the waiver provision provided in the federal regulations referenced in this section is consistent with the waiver provided in §23.142(d)(1)(B)(ii); therefore, the commission does not revise this section.

TTA also advocated consistency with proposed §23.142(d)(1)(C)(ii) of the Lifeline rule, which permits waiver of the prohibition on disconnection of service for non-payment of toll charges, and recommended amending §23.148(g)(2)(E) to accomplish this result.

The commission finds it unnecessary to make the revisions requested by TTA because this section is consistent with §23.142. Section 23.142(d)(1)(C)(ii) allows for a waiver of the prohibition on disconnection of service for non-payment of toll charges. Subsections (d)(3) and (g)(1)(C)(iii) refer to 47 C.F.R. §54.400, regarding terms and conditions, and §54.401, defining Lifeline. Section 54.401(b) specifically sets forth the requirements for a waiver of the requirement that an eligible telecommunications carrier may not disconnect a Lifeline customer for non-payment of toll charges. The commission determines that the waiver provision provided in the federal regulations referenced in this section is consistent with the waiver provided in §23.142(d)(1)(C)(ii); therefore, the commission does not revise this section.

TSTCI opines that while all small companies will be required to offer both Lifeline and Link Up to maintain their interstate revenue streams, the issue of certifying all ILECs by January 1, 1998 is crucial to enable them to maintain without interruption their revenue streams from federal USF support and the National Exchange Carriers Association (NECA) carrier common line pool. TSTCI encouraged the commission to approve proposed §23.142 and §23.148 as soon as possible. TSTCI urged the commission to implement a procedure whereby the ILECs can obtain interim certification as eligible carriers and approve any required Lifeline and Link Up Service tariffs by January 1, 1998, since any delay would jeopardize the small companies' entire interstate revenue stream. TSTCI offered to assist in this pursuit.

JSI urged the commission to act promptly on applications for designation as an eligible telecommunications carrier, since federal rules require certification of eligibility in order to receive federal universal service funds beginning January 1, 1998, and FUSF revenues represent a sizable portion (up to 20%) of ILECs' total operating revenues.

The commission declines to adopt §23.142 and §23.148 prior to the adoption of the other sections regarding universal service issues. The commission recognizes the importance of certifying carriers as eligible telecommunications carriers by January 1, 1998; therefore, the commission's ORA initiated Docket No. 18100 in order to timely address the issue.

Section 23.148(f) addresses the proceedings needed to designate common carriers as eligible telecommunications carriers. Pursuant to subsection (f)(2)(B) as published, an eligible telecommunications carrier acquiring exchanges from an unaffiliated carrier must file an application to amend its eligible telecommunications carrier service area to include those exchanges that are eligible for support.

The commission revises §23.148(f)(2)(B) to clarify that the eligible telecommunications carrier must amend its service area to include those geographic areas that are eligible for support, rather than the exchanges, because the eligible telecommunications carrier service area may be less than an exchange.

Section 23.148(g) sets forth the application requirements and commission processing of applications.

MCI recommended the elimination of the newspaper notice provision in §23.148(g)(1)(A) because the public will not affect the certification process; therefore, this publishing cost is unnecessary for the certification process. In its reply comments, Sprint agreed with MCI that newspaper notice of an ETP's applications for eligibility to receive federal universal service support should not be required. Sprint further commented that newspaper notice is costly and time- consuming and unlikely to result in any meaningful comments or participation by the public, and that newspaper notice is not required for an application for

ETP designation under §23.147(d), so there is no compelling reason to treat a federal universal service application differently. Sprint also stated that *Texas Register* notice should be sufficient and that, at the very least, newspaper notice should not be required of ILECs who already receive federal support.

The commission agrees that newspaper notice may be unnecessary in the federal certification process. Therefore, the commission revises §23.148(g)(1)(A) to eliminate the mandatory requirement of publishing newspaper notice, and to add the requirement that, at a minimum, notice shall be provided in the *Texas Register* and to state that the presiding officer may require additional notice.

Section 23.148(h) sets forth the requirements for designation of eligible telecommunications carriers for unserved areas.

TTA opined that neither FTA nor PURA authorized the commission to require a carrier to serve an area involuntarily, and recommended deleting §23.148(h) accordingly. GTE stated that §23.148(h) is beyond the commission's jurisdictional powers and recommended using the auction procedure described in §23.147(i). TTA also advised using the auction procedure under proposed §23.147(i) when an eligible telecommunications carrier that is the sole eligible telecommunications carrier relinquishes its status.

TCG supported the subsection stating that designation of the carrier "best able" to serve an unserved area as provided in proposed §23.148(h) is appropriate.

The commission declines to revise the section as requested by TTA and GTE. The commission agrees with TCG and finds that the Act §214(e)(3), as amended, requires a state commission, with respect to intrastate services, to determine which common carrier or common carriers are best able to serve.

Section 23.150 sets forth how the Texas universal service fund is to be administered.

Commenters provided the following general remarks concerning §23.150. TTA stated that §23.150 should be revised to recognize that TECA will oversee the winding up of the affairs of the toll pool. TTA also stated that §23.150 did not fully address obligations with respect to prior periods, and that the rule failed to address how any interim per-line support will be adjusted to require all carriers to maintain records of interim assessments and disbursements.

The commission declines to make the revision suggested by TTA. The existing support flows from the toll pool will be continued until implementation of the new TUSF. After the implementation of the new TUSF, the TUSF Administrator under supervision of the commission, will address the disposition of prior period obligations and interim TUSF support issues.

Section 23.150(d) sets forth the technical requirements for and duties of the TUSF administrator.

Some of the commenters opined on the qualifications and preferred level of neutrality for the TUSF Administrator.

Regarding §23.150(d)(1)(A), SWBT stated that the rule should permit selection of any entity whose board of directors reflects the composition of the telecommunications industry as a whole and has no greater than 50% of the board composed of ILECs, as such an entity would meet the criteria of not having a direct financial interest.

TTA noted that the requirement that the commission use a competitive bid process to select the administrator would require a bidding process even if the commission preferred to appoint an industry- representative entity as administrator.

In its reply comments, MCI urged the commission to reject TTA's and SWBT's suggestions to modify the eligibility requirements for the Texas USF administrator because the administrator must be, in fact and in appearance, impartial and neutral to all concerned.

AT & T stated its belief that the best interest of the public can only be served by having a truly impartial USF administrator. AT & T further commented that any entity that receives a substantial direct or indirect pecuniary interest, such as an entity that receives its operating support from dues paid by USF eligible members, should be disqualified.

In its reply comments, TTA urged rejection of AT & T's proposed restriction on the administrator, and reiterated its recommendation that the rule be revised to permit (1) existing TECA staff, under the commission's direct supervision, to serve as interim administrator; and (2) an association which is representative of all telecommunications providers to serve as administrator. This latter entity, TTA opined, could be funded by the TUSF, not by dues, as AT & T suggested.

TCG commented that the TUSF administrator should be neutral but did not believe that TECA, regardless of the composition of its board, can be neutral.

The commission agrees that the public interest will be best served with a truly neutral and impartial administrator. Because the plain meaning of the proposed rule will ensure that the TUSF administrator has no reasonable conflicts of interest which might impair the administrator's ability to manage the TUSF in an equitable and pro-competitive manner, the commission makes no changes in response to the comments. The commission notes TTA's concerns about appointing an administrator, but the rule is designed to protect against unfair biases in the selection of the administrator and the commission believes that a competitive bid process is appropriate for accomplishing this goal.

Some of the commenters made suggestions on the appropriate level of financial interest the TUSF administrator should possess.

Noting that proposed §23.150 required the USF administrator to have no "direct financial interest in the universal service support mechanisms established by the commission," TTA hypothesized that this language may be interpreted to preclude an entity similar to the Electric Reliability Counsel of Texas (ERCOT) independent system operator (ISO) from serving as USF administrator. TTA suggested revisions to the section consistent with its recommendation.

AT & T stated that it was proper for an accounting firm to manage the TUSF by conducting incidental audits, but that, no industry associations should be allowed any role in managing the TUSF. AT & T said that the rule as drafted allowed people with indirect pecuniary interests to serve as the administrator. AT & T and TCG contended that it would be best if only a person with no financial interests could be administrator for the TUSF. AT & T urged the commission to reject TTA's proposed modification of the administration of the USF. AT & T indicated that TTA's recommendation would allow those with a financial interest to be a part of the USF administration.

The commission does not modify §23.150(d) based upon the comments. The commission believes that the requirements of subsection (d) appropriately ensure the neutrality of the administrator. The commission will solicit bids through the request for proposal (RFP) process during the first quarter of 1998 and determine which bidder can best meet the requirements set forth in subsection (d).

Section 23.150(f)(2) sets forth the determination of the amount needed to fund the TUSF.

The commission clarifies §23.150(f)(2)(A) so that the commission may delegate the initial determination to the TUSF administrator.

Section 23.150(g) of the proposed rule governs how contributions to the TUSF will be assessed.

Some commenters discussed whether CMRS providers are exempt from TUSF assessments.

PrimeCo objected to the subsection (g) requirement that CMRS carriers contribute to the TUSF, arguing that such requirement contravened the Act §332(c)(3), as amended, which subjects CMRS carriers to state universal service support obligations only when the services offered are a "substitute for land line telephone exchange service for a substantial portion of the communications within such State." PrimeCo declared that its services did not meet this condition. PrimeCo further asserted that the FCC erred in its determination that the Act §332(c)(3), as amended, "does not preclude states from requiring CMRS providers to contribute to state support mechanisms," and exhorted the commission not to rely on it, but to construe the proposed rules according to Congressional intent. In its reply comments, PrimeCo argued that the commission should reject the reasoning in *Pittencrieff* and declare that CMRS providers may not be assessed the TUSF surcharge.

Regarding PrimeCo's argument that the requirement that CMRS providers contribute to the TUSF is unlawful, SWBT stated in its reply comments that PrimeCo's reading of the Act §332, as amended, is wrong. According to SWBT, Congress intended to ensure that the exemption from state rate regulation and entry given CMRS providers was not intended to relieve them of their universal service obligations, and the FCC's Report and Order is consistent with this construction. GTE agreed that wireless carriers should not be exempt from contributing to the maintenance of universal service and that this issue was laid to rest by the FCC's recent Memorandum Opinion and Order *In the Matter of Petition of Pittencrieff Communications, Inc. for Declaratory Ruling,* FCC 97-343 (Released October 2, 1997).

The commission makes no changes to the section based upon the comments. The commission believes that CMRS providers, as telecommunications providers, are required by PURA §56.002 to contribute to the TUSF. The commission notes the FCC's Memorandum Opinion and Order in Federal Docket No. WTB/POL 96-2, FCC 97-343, *In the Matter of Petition of Pittencrieff Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995.* In this Opinion, the FCC stated that requiring "...CMRS providers to contribute on an equitable and nondiscriminatory basis to state universal service support mechanisms falls within a state's lawful authority and therefore falls within the 'other terms and conditions' language of section 332(c)(3)(A) of the Communications Act of 1934, as amended (1934 Act) (parenthetical added)." *Id.* The FCC in *Pittencrieff* harmonized two apparently conflicting sections, the Act §332(c)(3) and FTA §254(f). Section 332(c)(3) prohibited States from regulating CMRS rates and entry, but it did allow states to regulate the terms and conditions under which CMRS is provided. Section 254(f) mandated that every telecommunications provider that provides telecommunications services shall contribute to the State's universal service fund. The FCC harmonized the two sections by holding that the universal service requirements are a part of the terms and conditions to provide CMRS service in the state. Using this logic, the FCC then ruled that PURA95 §3.606 and §3.608 were not preempted by the Act §332(c)(3). The commission concurs with the FCC's reasoning and holding in *Pittencrieff.*

Section 23.150(g)(1) specifies that all telecommunications providers "having access to the customer base" shall pay the TUSF assessments.

TCG wanted the phrase "having access to the customer base" defined. In its reply comments, SWBT responded to TCG's complaint that the phrase "having access to the customer base" is not understandable. SWBT indicated that it is not necessary for the commission to explain this phrase because it is in PURA §56.022 and is a phrase of long-standing existence.

The commission does not revise §23.150(g)(1) in response to the comments. The commission interprets PURA §56.022 to require that all telecommunications providers, including CMRS providers (see *Pittencrieff* discussion supra) furnishing telecommunication service in Texas, must pay the TUSF assessment.

Section 23.150(g)(2) delineates the basis for assessing TUSF payments.

TCG opposed §23.150(g)(2), which uses taxable telecommunication receipts as the basis for assessing service contributions, because it assesses revenues twice for universal service purposes. TCG proposed that carriers should contribute on the basis of their intrastate revenue less payments made to other carriers, or on the basis of their revenue from intrastate end-user services. In its reply comments, SWBT stated that the commission should retain the recommended taxable telecommunications receipts because they are based on a known standard and are fair to all carriers. SWBT argued that there is no inefficient double taxation as TCG argues.

The commission does not revise §23.150(g)(2) because the commission believes that taxable telecommunications receipts are the appropriate basis for the universal service assessment. Taxable telecommunications receipts are already used for the Texas Infrastructure Fund (TIF); therefore, it is administratively efficient to use that basis for the new TUSF. The commission believes that double assessments to the TUSF will not occur using taxable telecommunications receipts as the basis for the assessment. Taxable telecommunications receipts do not include receipts from the sale of wholesale services; therefore, a provider that sells wholesale service would not pay the TUSF assessment on such receipts. The provider that purchases the wholesale service and then sells such service to an end-user customer would pay the TUSF assessment. Accordingly, there is no double assessment as suggested by TCG.

MCI recommended that the commission revise the due date for reporting taxable receipts for calendar year 1997 in §23.150(g)(4)(A). MCI noted that this due date is before such receipts are due for the sales tax and TIF, and that for administrative convenience, the deadline should be February

15, 1998. TTA also noted that the deadline for filing the initial report with the TUSF administrator "within 30 days of the effective date" could conceivably occur before January 31, 1998, which is when the data necessary to make the filing become available.

The commission, in an effort not to impose unreasonable administrative burdens, revises the date to February 15, 1998. The commission believes that the revised deadline will allow telecommunications providers the required time to gather the necessary information.

Section 23.150(g)(5) addresses the recovery of the TUSF assessment and allows a telecommunications provider to recover the amount of its TUSF assessment from its retail customers.

The commission sought specific comment regarding allowing telecommunications providers to pass the TUSF assessment through to all retail customers in the form of a surcharge on the retail customers' bills. The commission asked whether, as a matter of policy, telecommunications providers should be permitted to apply the surcharge to basic local telecommunications services, i.e. basic network services, or more narrowly, to primary flat-rate residential lines, and if so, whether the basis of assessment should be correspondingly adjusted.

Some commenters suggested that the commission prohibit TUSF assessments through a surcharge to retail end users. Other commenters agreed that assessments to end users should be allowed, but differed as to whether such assessments should be based upon all revenues, upon all revenues excluding BLTS, or upon all revenues excluding Lifeline, Link-up, Tel-Assistance, and Prepaid Local Telephone services. Many commenters suggested that the only appropriate surcharge mechanism is a percentage based surcharge.

As discussed below, in response to the comments, the commission revises §23.150(g)(5) to require a percentage based surcharge on all retail customers except Lifeline, Link Up, and Tel-Assistance customers.

Several of the commenters remarked on the propriety of applying a surcharge to recover TUSF costs.

CU argued that the fairest collection mechanism was to require telecommunications providers to treat the assessment as any other cost of doing business, and not permit them to pass it directly through to retail customers.

OPC urged the commission to prohibit surcharges, which it defined as a fixed monthly charge that must be paid in order to obtain telephone service, entirely on several grounds: (1) as a matter of public policy, carriers benefit from universal service and should share in its support; (2) imposing costs on end users frustrates the universal service policy by raising the fixed monthly bill; (3) FTA §254(d) and (f) make no provision for recovery of USF contributions by a line item surcharge, and are quite clear that it is the carrier who must contribute; and (4) PURA §56.022(a) also requires that providers pay for universal service. OPC recommended that, as a matter of public policy, all providers should be assessed a fair share of the costs of universal service, and should be allowed to decide how to recover the assessment, e.g., usage charges, customer charges, or not at all.

SWBT stated that CU's and OPC's argument that the USF assessment should be treated as any other cost of business may sound worthy in the abstract, but in reality is a way to harm the ILECs who remain subject to various forms of regulation to which their competitors are not subject. SWBT asserted that the effect of CU's and OPC's argument would be to permit CLECs to assess a surcharge or raise their rates but then preclude ILECs from recovery. SWBT stated that it believes that it is appropriate to permit telecommunications providers to decide if they wish to surcharge their customers to recover the USF assessment.

GTE deemed without merit OPC's contention that a surcharge should not be allowed and that the market should dictate where and whether the carrier recovers its assessment. GTE commented that the commission has the authority to allow the surcharge and cited PURA §58.061 and paragraph 855 of the Report and Order.

PrimeCo declared that it agreed with the rule as proposed. PrimeCo supported requiring that the TUSF surcharge be explicitly identified as such on customer bills. PrimeCo also said that the cost of supporting universal services should be borne by the broadest possible portion of the general public. In its reply comments, PrimeCo stated that the commission is in danger of violating an ILEC's First Amendment rights if it prohibits a surcharge. PrimeCo argued that denying an ILEC the right to implement a surcharge is equivalent to controlling the content of their bills. PrimeCo stated that a business' right to commercial speech is protected by the First Amendment. PrimeCo averred that no compelling state interest would be furthered by prohibiting the use of an explicit surcharge. PrimeCo argued that hiding the amount that any individual customer is contributing to the TUSF hardly seems to be a useful goal. PrimeCo allowed that the commission may require that any surcharge be presented in an accurate and non-misleading manner, and that the commission may even determine that the surcharge cannot be applied to some services, e.g., Tel-Assistance, if it reasonably concludes that this direct action furthers the goal of universal service. PrimeCo observed that the reality of the situation is that every telecommunications provider will treat contribution to the TUSF as a cost of doing business and will pass this cost on to customers.

The commission declines to revise §23.150(g)(5) in response to the comments. The commission does not consider a surcharge to be contrary to the principle of universal service or incompatible with the concept of affordable basic rates. The commission's authority to allow a surcharge is provided by PURA §58.022 and §58.061. Although the commission has the authority to mandate inclusion of a TUSF surcharge on end users, the commission declines to impose this requirement and will allow telecommunications providers to determine whether a TUSF surcharge should be imposed on their retail customers.

In response to OPC's comments, the commission disagrees with OPC's definition of "surcharge," and the commission interprets OPC's comments to state that OPC would disagree with a "surcharge" only if it is a fixed monthly fee. The commission believes that the term "surcharge" can refer to a percentage based charge to the end user, not just to a fixed monthly fee. In response to OPC's comments, the commission revises §23.150(g)(5) as discussed below to require telecommunications providers that elect to surcharge end users to do so on a percentage basis, not a fixed monthly fee basis. The commission agrees with OPC that a telecommunications provider should be allowed to decide whether to recover the TUSF assessment or not and the commission believes that the section reflects this position.

Because the commission does not prohibit a surcharge, PrimeCo's argument about abridging an ILEC's First Amendment Free Speech rights is moot. The commission agrees with PrimeCo that the commission may mandate that the surcharge be presented in an accurate and non-misleading manner. Section 23.150(g)(5)(A)(i) requires telecommunications providers choosing to surcharge their retail customers to list the surcharge on the retail customers' bill as "the universal service fund surcharge."

GTE asserted that the best recovery mechanism would be a mandatory surcharge on all retail telecommunications services. GTE said that if the application of the surcharge is to be optional, then each carrier must be allowed the ability to apply the surcharge to all of its services, including basic network services.

Sprint argued that in order for the rule to be competitively neutral it should require providers to surcharge its customers and add the surcharge to the retail customer's bill in an explicit manner. Sprint argued that absent such a requirement there may be a competitive disadvantage to those companies that do pass the charge through to the end-user compared with those who do not.

Although the commission has the authority to mandate inclusion of a TUSF surcharge on end users, the commission declines to impose this requirement and will allow telecommunications providers to determine whether a TUSF surcharge should be imposed on its retail customers. The commission believes that a telecommunications provider should be allowed to decide whether to recover the TUSF assessment or not. The commission believes that this approach is competitively neutral because each telecommunications provider may choose for itself what it wishes to do about the recovery of the TUSF assessment. Each telecommunications provider is free to respond to the competitive market.

AT & T stated that a surcharge for TUSF should apply to all retail services, yet if the commission decides to exempt residential lines or exclude Basic Network Services, then the commission should be vigilant against allowing double assessments to be made.

MCI argued that the commission should prohibit LECs from assessing universal service support surcharges on non-retail customers for non-retail related services like UNE, resale, and access charges.

PrimeCo argued against exempting so broad a category as subscribers to Basic Network Services, or primary, flat-rate residential lines, asserting that there was no common attribute, such as income level, that distinguished these subscribers from any other, and would make them deserving of special treatment. PrimeCo stated that if any services are exempted from bearing a part of this cost, the obvious impact is that the non-exempt services will bear more than they otherwise would. PrimeCo commented that the burden of funding TUSF would be shifted to just those subscribers who use non-exempt services and, to a considerable extent, will be shifted away from the ILECs' subscribers and onto customers of other providers, including paging, mobile, and other wireless services. PrimeCo said that this shifting violates the competitive neutrality principle. PrimeCo stated that the better course is to establish a broad base of contributors and a narrow list of services to be supported so that each individual's contribution is as low as possible. PrimeCo suggested that the only conceivable exemption would be recipients of targeted subsidies, such as Lifeline customers. Sprint proposed that eligible Lifeline, Link Up, and Tel-Assistance customers not be required to pay the surcharge.

GTE argued that if the surcharge is not allowed to be applied against all services equally yet the assessment base remains the same, the plan will fail to achieve competitive neutrality. GTE argued that companies with higher proportions of basic customers will have to charge a greater percentage surcharge against their remaining revenue base, placing them at a competitive disadvantage. GTE surmised that even if the assessment base is adjusted to also exclude basic services, carriers will still face a competitive disadvantage in that companies not price-regulated by the commission can allocate their assessment at will while ILECs must spread the surcharge as directed by the commission.

Referencing GTE's comments, Sprint stated that the effect of excluding residential flat rate lines from assessment and the calculation of carriers' contribution is to shift more of the burden on other services, e.g. toll and vertical services. Sprint said that in addition to defeating the purpose of the TUSF in making support for BLTS explicit, the loading of increased burdens on other services is inequitable and competitively unfair. Sprint opined that providers of those services and their customers will have to carry the increased load, to the advantage of ILECs who provide the excluded residential local service. Consequently, Sprint argued that residential local service should not be excluded from the surcharge assessment or calculation of carrier obligations if all customers and service providers are to be treated in an equitable and competitively neutral manner.

TTA stated that the commission should not prohibit telecommunications providers from applying the surcharge to BLTS, on the grounds that such a policy would be applied only to providers whose rates are regulated by the commission. TTA argued that all non-regulated providers have the option of applying or not applying a surcharge to any of their services, and that such a result was inequitable. TTA also surmised that exclusion of a retail telecommunications service from the surcharge would place an increased burden on remaining services. TTA observed that, for example, if BLTS was excluded from the surcharge, an ILEC would only be allowed to surcharge competitive services to recover its TUSF assessment. TTA argued that such a plan would not be competitively neutral, since the non-regulated providers would be unrestricted in how they could allocate their assessment recovery. TTA reasoned that if the commission were to order the ILECs to exclude certain services from the surcharge, those same services must also be excluded from the TUSF assessment base in order to maintain competitive neutrality. In its reply comments, TTA concurred with the majority of commenters that the surcharge should be applied to all retail revenues included in the TUSF assessment base. If Lifeline and Tel-Assistance services are excluded from the surcharge, TTA recommended (1) that the amount of surcharge that would have been collected from these services be reimbursable from the fund and (2) that the corresponding cost amount be reported to the administrator so that the percentage assessment can be calculated and applied uniformly among all telecommunications providers.

SWBT stated that it would not object to excluding residential flat rate lines from the assessment if an adjustment was also made to the assessment base. SWBT restated its position that if the commission decides not to surcharge basic services, then in

order to maintain competitive neutrality, the basis of assessment to telecommunications providers should also be changed to omit basic service revenues.

Sprint suggested that customers eligible for Lifeline, Link Up, and Tel-Assistance should be excluded to ensure that the goals of those programs are met.

CU argued that a surcharge on BLTS amounted to a basic service rate increase and that such an increase was antagonistic to the public policy goal of affordability. CU further argued that it was senseless to surcharge the basic service rate, since basic service was intended to be the "supported" service. CU commented that, if a surcharge was applied to BLTS while toll and access charges were reduced, the majority of residential ratepayers are not likely to see a neutral outcome in their bills.

CEJ argued that, because the goal of universal service was to make basic service more available and affordable, the TUSF assessment surcharge should not apply to basic local service. CEJ also asserted that at the very least the TUSF surcharge should not apply to Lifeline, Link Up, Tel- Assistance, and prepaid local service under §23.40 (relating to Prepaid Local Telephone Service), since these services were created for customers identified as having an affordability problem.

In its reply comments, SWBT stated that CU's argument that the surcharge on basic service revenues runs counter to the public policy of affordable rates ignores the public policy that all who can afford to should support universal service. SWBT argued that the commission's plan adequately deals with the question of low income customers through Lifeline, Link Up, and Tel-Assistance. SWBT stated that there is no evidence that surcharging basic service customers will make local service anything other than affordable.

GTE responded to CU and CEJ's assertion that a surcharge on basic service is contrary to the universal service principle that basic service rates should be affordable. GTE pointed out that through PURA §56.021 and §58.061, it does not appear that the Texas Legislature views universal service charges as conflicting with the idea of affordable basic services. In its reply comments, GTE opposed CEJ's proposal that the surcharge not be applied against Lifeline, Link Up, Tel-Assistance, or prepaid local telephone service. GTE indicated that this proposal was administratively burdensome and unnecessary. GTE stated that if the commission chose to exclude a class of customers the lost support from these customers must be made up from the fund on a nondiscriminatory basis.

The commission finds that, if a telecommunications provider elects to assess a TUSF surcharge, such surcharge should apply to all retail services except Lifeline, Link-up, and Tel-Assistance services, and revises §23.150(g)(5) accordingly. The commission finds that, pursuant to PURA §56.021 and §58.061, a TUSF charge may not grant an unreasonable preference or advantage to a telecommunications provider or subject a telecommunications provider to unreasonable prejudice or disadvantage. Therefore, the commission finds that the surcharge assessment to retail customers must apply to all services to prevent any anti-competitive effects. However, the commission finds that, because Lifeline, Link-up, and Tel-Assistance services are a small portion of telecommunications services provided, no anti-competitive effects will result from exempting these services.

The commission rejects the suggestion to except Prepaid Local Telephone Service customers from paying the surcharge because such customers have not shown that they qualify for one of the low-income assistance programs.

The commission believes that the administrative issues for the telecommunications providers arising by exempting these customers are offset by the public interest aspect of ensuring that qualifying low-income customers have affordable telephone service. The commission disagrees with TTA's recommendation that if Lifeline and Tel-Assistance services are excluded from the surcharge, (1) the amount of surcharge that would have been collected from these services should be reimbursable from the fund, and (2) the corresponding cost amount should be reported to the administrator so that the percentage assessment can be calculated and applied uniformly among all telecommunications providers. The commission finds that the administrative burden for the TUSF administrator to implement TTA's suggestions would overshadow the amount of surcharge that would have been collected by the telecommunications providers but for this exemption. The commission further notes that the TUSF administration costs must be paid from the TUSF and, therefore, paid by the telecommunications providers themselves.

The commission also rejects the arguments that BLTS should not be assessed the TUSF surcharge. The commission believes that assessing all retail services except Lifeline, Link Up, and Tel-Assistance fairly treats all customers because all customers will be assessed the surcharge on the same basis. The commission notes that §23.147 sets forth requirements for an ILEC-ETP to reduce rates as determined appropriate by the commission in exchange for the THCUSP receipts. As a result, the commission finds that while a customer may be assessed a surcharge, the customer may also experience reductions in rates for other services to which that customer subscribes. The commission notes that, depending on the different services to which a customer subscribes, it is possible that individual customers may experience an overall decrease in their bills. However, any increased charges to the general body of customers will be offset by reductions in other charges. Further, low-income customers are protected by the various programs for which they qualify. And, as discussed above, the commission finds that, in order to maintain competitive neutrality under PURA, all services must be assessed the surcharge. The commission also finds that, because PURA requires assessments on BLTS, assessing BLTS does not impair the universal service policies of providing affordable service.

The commission is persuaded by the comments that if BLTS is exempted from the surcharge assessment, various anti-competitive effects may result, such as non-exempt services provided by both non-regulated providers and regulated providers bearing a larger burden than they otherwise would bear. The commission finds that, pursuant to PURA §56.021 and §58.061, a TUSF charge may not grant an unreasonable preference or advantage to a telecommunications provider or subject a telecommunications provide to unreasonable prejudice or disadvantage. Therefore, the commission finds that the surcharge assessment must apply to BLTS to prevent any anti-competitive effects.

Because the commission does not exempt BLTS from the TUSF surcharge assessment, the commission need not revise the section to adjust the basis of the assessment to omit BLTS.

The commission specifically sought comment on the equity of a percentage-based surcharge. A number of commenters remarked on the desirability of using a percentage-based surcharge to pay for the TUSF.

TTA, AT & T, GTE, MCI, Sprint, SWBT and CU indicated support for a percentage-based surcharge. OPC commented that if the commission adopted a surcharge, the surcharge should be percentage-based.

TTA counseled the commission to establish a uniform surcharge, and define it as a percentage charge on all retail services. TTA stated that the most equitable and competitively neutral method of TUSF recovery is to establish a percentage surcharge on each dollar of retail revenue included in the TUSF assessment base. TTA surmised that no one group of retail customers would be adversely affected as compared to another, as could easily result with any other surcharge mechanism. TTA commented that the percentage surcharge is competitively neutral, efficient, and automatic, requiring a minimum of resources to administer.

AT & T reasoned that a percentage based surcharge on retail services is equitable.

GTE stated that an automatic end-user percentage surcharge will ensure that each carrier's fund obligations are recovered from all services and all end-users in an even-handed, competitively neutral fashion.

MCI affirmed that a percentage based surcharge on retail services is reasonable since it would be consumption based, like the sales tax.

Sprint argued that a requirement that contributions be recovered through an equal percentage surcharge is the best way to ensure that the principle of explicit and competitively neutral funding is met.

SWBT stated that the most equitable and competitively neutral method of TUSF recovery is to establish a percentage surcharge on each dollar of retail revenue as defined in the rule.

Of the surcharge options, CU opined that the flat rate surcharge was the most regressive and constituted most directly a basic rate increase. CU stated that it would be fairer to base the surcharge on a percentage calculation which excluded basic service.

If a surcharge is adopted, OPC recommended that it be based on a percentage mark-up of non- basic services. OPC reasoned that allowing it to be assessed on basic service rates, thereby raising them, undermined the purpose of the USF–to make basic service affordable.

The commission agrees with the commenters that a percentage-based surcharge is the most appropriate method for a telecommunications provider to recover the amount of its TUSF assessment from its retail customers. The commission finds that, if a telecommunications provider elects to assess a TUSF surcharge, this approach is the most equitable for customers because customers pay according to the amount of telecommunications services that they use. The commission is persuaded that a flat-rate surcharge would not be equitable because each customer would pay the same amount regardless of the amount of telecommunications services purchased. The commission also believes that this method is competitively neutral for telecommunications providers because each provider is treated in the same manner as another. Section 23.150(g)(5) is revised to require that a telecommunications provider electing to surcharge its retail customers does so using a percentage-based assessment applied to the retail customers' bills. The telecommunications provider shall not discriminate with respect to this surcharge. If the telecommunications provider chooses to surcharge its customers, such telecommunications provider shall assess all of its retail customers, except the exempted customers as discussed above, the same percentage surcharge.

TTA argued that the surcharge percentage should be updated periodically by the TUSF administrator and provided to the assessed telecommunications providers. TTA suggested that this would permit each telecommunications provider to collect the surcharge and remit it to the administrator as its assessment, much like sales tax is done currently. TTA reasoned that an approved percentage surcharge would treat all customers and providers alike.

The commission agrees that the TUSF Administrator should have the responsibility of updating the surcharge percentage.

TTA recommended that the surcharge be defined as a uniform surcharge in order to avoid the necessity of a commission proceeding for each telecommunications provider seeking to recover its assessment. TTA also indicated that the commission should provide a presumption of reasonableness for a surcharge in the same percentage as the assessment percentage determined by the administrator.

The commission declines to revise the section in response to TTA's comment. The commission finds that it is appropriate for the commission to review the surcharge mechanism used by each telecommunications provider. The commission notes that as a legal matter ILECs may not charge rates that are not in their tariffs.

TTA also recommended deleting §23.150(g)(5)(D), which permits a carrier to recover the assessment through a one-time annual lump sum surcharge, on the grounds that customers are not likely to prepare for this one-time event.

The commission agrees with TTA's evaluation that a one-time annual lump sum surcharge is not appropriate and revises §23.150(g)(5)(D) to require that the surcharge be made on a monthly basis.

AT & T commented that the surcharge should be applied as a percentage of Yellow Page revenues as well as retail, non-basic end-user services, including non-primary residential lines, multi-line business services, toll, and discretionary services. In its reply comments, SWBT labeled AT & T's suggestion that Yellow Pages revenues be assessed for the USF surcharge as a cynical effort at competitive non-neutrality. SWBT stated that by imposing the surcharge on revenues which it has and AT & T does not, AT & T would gain an advantage in the competitive marketplace. SWBT stated that no statutory authority exists for the imposition of an assessment on Yellow Pages revenues. SWBT noted that PURA §51.002(10) does not include any reference to publishers of Yellow Pages. SWBT opined that consideration of AT & T's proposal would be equivalent to assessing the revenues of other lines of business that AT & Tis in, such as international long distance services. TTA opposed applying the surcharge to Yellow Page revenues on the basis that these revenues were not "taxable telecommunications receipts" for TIF assessment purposes, nor were they "services,"

as defined by PURA §11.003(18), over which the commission has jurisdiction.

The commission declines to revise the subsection as proposed by AT & T. The commission finds that, at this time, assessing Yellow Pages revenues is inappropriate because Yellow Page revenues are not the revenues of a telecommunications provider.

Section 23.150(h)(3) addresses the timing of the disbursements from TUSF.

GTE maintained that the disbursement of funds should be made on a monthly basis rather than every 60 days.

The commission accepts GTE's proposed change to the deadline.

Section 23.150(k) addresses the treatment of proprietary information.

TCG commented on the appropriate level of confidentiality to be accorded supporting documentation for the TUSF assessments. TCG supported the confidential treatment of company financial documents submitted as the basis for the TUSF assessment.

PrimeCo requested the commission clarify §23.148(g) to specify that telecommunications providers are permitted to label their taxable telecommunications receipts "proprietary" and submit them under seal, and to direct the TUSF administrator to treat such "proprietary information" as confidential unless and until an opinion of the Texas Attorney General orders disclosure.

The commission agrees with TCG that the company financial documents submitted for the TUSF assessment should be treated as confidential information, if the company so requests. The commission assumes that PrimeCo is referring to §23.150(g) regarding assessment for the TUSF. The commission does not revise the subsection in accordance with PrimeCo's comments because §23.150(k) specifies the treatment of information as proprietary. A telecommunications provider may designate taxable telecommunications receipts as proprietary pursuant to §23.150(k). Information so designated will then be treated as proprietary by the TUSF administrator and disclosed only to the telecommunications provider that submitted it, to the commission or its designated representatives, or only upon an opinion of the Attorney General ordering disclosure to a third party.

In its reply comments, CU commented that if implementing §23.133, the THCUSP, resulted in an increase in local service costs through a fee or surcharge, then the commission should not adopt this rule at this time. CU recommended that the commission complete only the portions of this rulemaking regarding small rural high cost companies and the implementation of Lifeline and Link Up. To support its recommendation, CU commented that residential telephone consumers could look forward to new charges of nearly $1 billion and only a promise that reductions in access charges and toll will offset the increase. CU commented that SWBT and GTE are financially healthy companies and questioned why such companies would need a surcharge in order to continue to provide local phone service.

The commission declines to accept CU's recommendation. Adoption of §23.133, which provides a competitively neutral support mechanism for customers residing in high cost rural areas of the large ILECs, will help to encourage competitors to serve those areas because competitive carriers will have access to necessary support for those high cost rural customers. Without such a program, those customers most likely will not see the benefits of competition. As discussed in response to the comments regarding §23.150(g)(5), §23.147 sets forth requirements for an ILEC-ETP to reduce rates as determined appropriate by the commission in exchange for the THCUSP receipts. As a result, the commission finds that while a customer may be assessed a surcharge, the customer may also experience reductions in rates for other services to which that customer subscribes. The commission notes that, depending on the different services to which a customer subscribes, it is possible that individual customers may experience an overall decrease in their bills. However, any increased charges to the general body of customers will be offset by reductions in other charges. Further, low-income customers are protected by the various programs for which they qualify. And, as discussed above, the commission finds that, in order to maintain competitive neutrality under PURA, all services must be assessed the surcharge. The commission also finds that, because PURA requires assessments on BLTS, assessing BLTS does not impair the universal service policies of providing affordable service.

The commission requested that parties comment on the need to repeal P.U.C. Substantive Rules §§23.17 (relating to the Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues), 23.52 (relating to Tel-Assistance and Lifeline Service), and 23.53 (relating to the Universal Service Fund), and on the appropriate timeline for repeal.

AT & T, MCI, GTE, and OPC concurred that the existing rules should be repealed upon the effective date of the proposed rules. GTE indicated that transition should be seamless with monies remaining in any of the current pools or funds transferred to the new fund or distributed in an equitable manner to the participants.

Sprint, SWBT, and TTA asserted that the commission should not yet repeal §23.17. Sprint indicated that until CCN holders in Texas develop a true "IXC-like" toll delivery network the current procedure detailed in §23.17 needs to continue in place. SWBT recommended that the commission consider modifying §23.17 to remove the toll pool reference once intraLATA toll pool compensation has moved to the TUSF and all prior toll pool-related activity has been finalized. TTA opined that it was necessary to retain section §23.17 until the affairs of the intraLATA toll pool are concluded. TTA explained that once the pool is terminated, there remain duties that TECA will have to perform for the final true-up of pool payments and review of final settlement cost studies. TTA recommended that §23.17 remain in place until TECA notifies the commission that these duties have been concluded. TTA expects this conclusion to be 4th quarter 1998.

TTA and Sprint advised repealing §23.52 when funding and tariffs under §23.142 and §23.143 become effective.

Sprint stated that it is not clear from §23.133 that current HCAF support amounts will be transferred to the new TUSF. Sprint indicated that if those amounts are transferred then §23.53 can be deleted as soon as the new TUSF rules are implemented. TTA reiterated its position that the existing HCAF funding should be transferred from §23.53 to proposed §23.136, with funding under new §23.136 effective on the date existing funding terminates. TTA opined that since it appears that actual funding under the new rule will not occur on the effective date of the new rule, it will be necessary to delay repeal of current

§23.53 until funding under new §23.136 is actually in place. TTA recommended interim funding under the new TUSF rules be effective July 1, 1998, the date the existing toll pool agreement will expire. If this recommendation is adopted, TTA would recommend a date of June 30, 1998, for repeal of §23.53.

The commission shall retain §23.17 until TECA concludes the final true-up of pool payments and review of final settlement cost studies as suggested by TTA. The commission shall begin the repeal process for §23.52. The commission clarifies that companies wishing to continue receiving the §23.53 support amount must file for that support pursuant to §23.136. The commission shall begin the repeal process for §23.53 within 30 days after support under §23.136 becomes available.

These new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §51.001, Chapters 56, Subchapters B and C (Vernon 1998) (PURA). Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 51.001 sets forth the state's policy regarding telecommunications. Chapter 56, Subchapter B, sets forth the requirements for the Universal Service Fund. Chapter 56, Subchapter C, sets forth the requirements for the provision of the Tel-Assistance Program.

Cross Index to Statutes: PURA §14.002 and §51.001, and Chapter 56, Subchapters B and C.

§23.131. Texas Universal Service Fund (TUSF).

(a) Purpose. The purpose of the Texas Universal Service Fund is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist local exchange companies (LECs) in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse qualifying entities for revenues lost as a result of providing Lifeline, Link Up and Tel-assistance services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications device distribution service for the hearing-impaired and speech-impaired; and reimburse the Texas Department of Human Services, the Texas Department for the Deaf and Hard of Hearing, the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).

(b) Programs included in the TUSF.

(1) Section 23.133 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));

(2) Section 23.134 of this title (relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan);

(3) Section 23.136 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);

(4) Section 23.138 of this title (relating to Additional Financial Assistance (AFA));

(5) Section 23.142 of this title (relating to Lifeline and Link Up Service);

(6) Section 23.143 of this title (relating to Tel-Assistance Service);

(7) Section 23.144 of this title (relating to Telecommunications Relay Service);

(8) Section 23.145 of this title (relating to Specialized Equipment Distribution);

(9) Section 23.147 of this title (relating to Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(10) Section 23.148 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds (FUSF)); and

(11) Section 23.150 of this title (relating to Administration of the Texas Universal Service Fund (TUSF)).

§23.133. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange carriers (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Benchmark - The per-line amount above which THCUSP support will be provided.

(2) Business line - The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(3) Census block group (CBG) - A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(4) Discretionary services - Services that may be added, at the user's option, to basic local telecommunications service, such as call waiting, call forwarding, and caller ID.

(5) Eligible line - A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(6) Eligible telecommunications provider (ETP) - A local exchange company (LEC) designated by the commission pursuant to §23.147 of this title (relating to Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(7) High cost area - A geographic area for which the costs established using a forward- looking economic cost methodology exceed the benchmark levels established by the commission.

(8) Incumbent local exchange carrier (ILEC) - That definition given in §23.3 of this title (relating to Definitions).

(9) Local exchange carrier (LEC) - That definition given in §23.3 of this title.

(10) Residential line - The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(c) Application. This section applies to LECs that have been designated ETPs by the commission pursuant to §23.147 of this title.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. As of the effective date of this section, basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) dual party relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline and tel-assistance services.

(2) Subsequent determinations.

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from the effective date of this section.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (4) of this subsection.

(1) Determining base support amount available to ETPs. The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per- line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.

(A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward- looking economic cost methodology.

(B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. As of the effective date of this section, the benchmarks for both residential and single-line businesses will be calculated using the statewide average revenue per line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

(i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.

(ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single-line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.

(C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.

(2) Initial proceeding to determine base support amount. Within 30 days of the effective date of this section, the commission shall initiate a proceeding to determine:

(A) the per-line cost of providing the services, using a forward-looking economic cost methodology on no greater than a CBG basis, or any other geographic area deemed appropriate by the commission, as required by paragraph (1) of this subsection; and

(B) the benchmark as required by paragraph (1) of this subsection.

(3) Subsequent proceedings to determine THCUSP base support.

(A) Timing of subsequent determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from the effective date of this section.

(ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.

(4) Calculating amount of THCUSP support payments to individual ETPs. After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §23.147 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

(B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(C) Adjustment for service provided solely through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely through the purchase of UNEs, the commission shall determine the manner in which any THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs.

(f) Reporting requirements. An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.

(1) Initial reporting requirements. An ETP shall provide the commission with information deemed necessary by the presiding officer in the proceeding conducted pursuant to §23.150(f)(2)(A) of this title (relating to Administration of Texas Universal Service Fund (TUSF)).

(2) Monthly reporting requirements. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) information regarding the access lines on the ETP's network including:

(i) the total number of access lines on the ETP's network,

(ii) the total number of access lines sold as UNEs,

(iii) the total number of access lines sold for total service resale,

(iv) the total number of access lines serving end use customers, and

(v) the total number of eligible lines for which the ETP seeks TUSF support;

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

(C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(4) of this section.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator.

(g) Review of THCUSP after implementation of federal universal service support. The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

§23.134. Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan.

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of rural ILECs areas and small ILECs' areas in the state so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Eligible line - A residential line and a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(2) Eligible telecommunications provider (ETP) - A telecommunications provider designated by the commission pursuant to §23.147 of this title (relating to the Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Rural incumbent local exchange carrier (ILEC) - An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(4) Small incumbent local exchange carrier (ILEC) - An ILEC that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act, §53.304(a)(1).

(5) Study area - An ILEC's existing service area in a given state.

(6) Test year - The fiscal year ending in 1997.

(c) Application.

(1) Small or rural ILECs. This section applies to small ILECs and rural ILECs, as defined in subsection (b) of this section, that have been designated ETPs by the commission pursuant to §23.147 of this title.

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to LECs other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs by the commission pursuant to §23.147 of this title.

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal

Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §23.133(d) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)).

(e) Small and Rural ILEC Universal Service Plan monthly per-line support. A monthly per-line amount of support for each small or rural ILEC study area shall be determined in a one-time calculation using data from such small or rural ILEC's test year that has been audited by an independent auditor in conformance with generally accepted accounting principles (GAAP).

(1) Calculation of the monthly per-line amount of support for each small or rural ILEC. The toll pool amounts and access/toll revenue reductions determined in accordance with subparagraphs (A) and (B) of this paragraph shall be added together. To calculate the per-line amount of support, the resulting sum will then be divided by the average number of eligible lines served by such small or rural ILEC during the test year. To calculate the monthly per-line amount of support, the result shall be divided by 12.

(A) Toll pool amounts. The toll pool amount for a small or rural ILEC shall be determined by subtracting the actual toll billed by the small or rural ILEC during the test year from its toll pool revenue requirement for the test year, as certified by the Texas Exchange Carrier Association (TECA).

(B) Access/toll revenue reduction. If at the time this section is implemented:

(i) a small or rural ILEC reduces its common carrier line (CCL) charge, residual interconnection charge (RIC) and/or intraLATA toll rates to match the reduction in CCL, RIC and/or intraLATA toll rates of one of the ILECs receiving support under §23.133 of this title, such small or rural ILEC may recover the difference between the previous rates and the new rates, computed on the basis of minutes of use in the test year. This amount is calculated by multiplying the difference between the previous and the new rates by the test year minutes of use; or

(ii) a small or rural ILEC reduces its CCL, RIC, and/or intraLATA toll rates to the revised rate level of one of the ILECs receiving support under §23.133 of this title, such small or rural ILEC may, upon commission approval, recover the difference between the previous rates and the revised rates, computed on the basis of minutes of use in a test year. This amount is calculated by multiplying the difference between the previous and the revised rates by the test year minutes of use.

(2) Freeze on support levels. The per-line amount of support calculated in paragraph (1) of this subsection shall remain constant as long as the small or rural ILEC is eligible to receive funds pursuant to this section.

(3) Proceeding to determine support amount. Within 30 days of the effective date of this section, the commission shall initiate a proceeding to determine the monthly per- line amount of support as required by paragraph (1) of this subsection.

(f) Small and Rural ILEC Universal Service Plan support payments to ETPs. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.

(1) Payments to small or rural ILEC ETPs. The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) Payments to ETPs other than small or rural ILECs. The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) Initial reporting requirements. ETPs shall provide the commission with information deemed necessary by the presiding officer in the proceeding conducted pursuant to §23.150(f)(2)(A) of this title (relating to the Administration of the Texas Universal Service Fund (TUSF)).

(2) Monthly reporting requirements. An ETP shall report the total number of eligible lines served by the ETP in its study area to the TUSF administrator on a monthly basis.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(4) Other reporting requirements. An ETP shall report any other information required by the commission or the TUSF administrator.

(h) Review of Small and Rural ILEC Universal Service Plan after implementation of federal universal service support. Within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas, the commission shall initiate a project to investigate a mechanism by which ETPs receiving support pursuant to this section would transition to receiving support pursuant to §23.133 of this title.

§23.136. Implementation of the Public Utility Regulatory Act §56.025.

(a) Purpose. The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.025.

(b) Applicability. An incumbent local exchange company (ILEC) serving fewer than five million access lines may seek to recover funds from the Texas Universal Service Fund (TUSF) under this section in the following circumstances:

(1) Commission reduction in the amount of high cost assistance fund. In the event of a commission order, rule, or policy, the effect of which is to reduce the amount of the high cost assistance fund support received by the ILEC as of the effective date of this section, except an order entered in an individual company revenue requirement proceeding, the commission shall allow, through the universal service fund, an ILEC to replace the reasonably projected reduction in revenues caused by that regulatory action.

(2) Change in federal universal service fund revenues. In the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of an ILEC or change costs or revenues assigned to the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected change in revenues caused by the regulatory action.

(3) Commission change in intraLATA dialing access policy. In the event of a commission change in its policy with respect to intraLATA "1+" dialing access, the commission shall,

through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected reduction in contribution caused by the action. Contribution for purposes of this paragraph equals average intraLATA long distance message telecommunications service (MTS) revenue, including intraLATA toll pooling and associated impacts, per minute less average MTS cost per minute less the average contribution from switched access times the projected change in intraLATA "1+" minutes of use.

(4) Other governmental agency action. In the event of any other governmental agency issuing an order, rule, or policy, the effect of which is to increase costs or decrease revenues of the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates, if that increase would not adversely impact universal service, replace the reasonably projected increase in costs or decrease in revenues caused by that regulatory action.

(c) Requirements of the ILEC.

(1) Burden of proof. The ILEC seeking to recover funds from the TUSF under this section has the burden of proof. A revenue requirement showing is not required with respect to disbursements from the TUSF under this section.

(2) Contents of application. The ILEC seeking to recover funds from the TUSF under this section shall file an application:

(A) complying with the commission's Procedural Rules §22.73 of this title (relating to General Requirements for Applications); and

(B) providing the amount requested from the TUSF under this section, the calculation of the amount requested, and detailed documentation and workpapers supporting the calculations.

(3) Notice. The ILEC seeking to recover funds from the TUSF under this section shall provide notice as required by the presiding officer pursuant to the commission's Procedural Rules §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, the notice shall state that the ILEC is requesting to recover funds from the TUSF under this section and the Public Utility Regulatory Act §56.025 and state the amount the ILEC is requesting to recover. At a minimum, the notice shall be published in the Texas Register.

(d) Commission processing of the application.

(1) The application shall be processed under the commission's Procedural Rules.

(2) The commission shall process applications under this section promptly and efficiently.

(e) Reporting requirements. An ILEC awarded support under this section shall provide the TUSF administrator a copy of the commission's final order indicating the amount of support it is to receive under this section.

§23.138. Additional Financial Assistance (AFA).

(a) Purpose. Incumbent local exchange carriers (ILECs) serving high cost and rural areas of the state may require financial assistance, in addition to the funds provided by §23.133 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)), by §23.134 of this title (relating to Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan), or by §23.136 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025), so that these carriers may provide basic local exchange service at reasonable rates. This section establishes guidelines for requesting Additional Financial Assistance (AFA) from the Texas Universal Service Fund (TUSF).

(b) Application. Any ILEC that has been designated by the commission as an eligible telecommunications provider (ETP) and is not an electing company under the Public Utility Regulatory Act (PURA) Chapter 58 or 59, may request AFA in a PURA §§53.105, 53.151, or 53.306 proceeding completed after the effective date of this section.

(c) Establishment of AFA need. The commission may approve an ILEC's AFA request if the commission finds:

(1) that the ILEC has fulfilled the appropriate requirements under PURA §§53.105, 53.151, or 53.306; and

(2) that raising the ILEC's rates for basic local telecommunications service, as defined in §23.133 of this title, would adversely affect universal service in such ILEC's certificated service area.

(d) Reporting requirements. Any ILEC awarded AFA support pursuant to this section through a commission proceeding shall provide the TUSF administrator with a copy of the final order indicating the amount of support.

§23.142. Lifeline Service and Link Up Service Programs.

(a) Application. This section applies to eligible telecommunications carriers as defined by §23.148 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds (FUSF)).

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

(1) Qualifying low-income consumer - A consumer who participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(2) TDHS - Texas Department of Human Services.

(3) Toll blocking - A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(4) Toll control - A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(5) Toll limitation - Denotes both toll blocking and toll control.

(c) Lifeline Service and Link Up Service. Each eligible telecommunications carrier shall provide Lifeline Service and Link Up Service as provided by this section. A consumer eligible for Lifeline Service is automatically eligible for Link Up Service. However, a consumer may qualify for and receive Link Up Service independently of Lifeline Service. Nothing in this section shall prohibit a consumer otherwise eligible to receive Lifeline Service and/or Link Up Service from obtaining and using telecommunications equipment or services designed to aid such consumer in utilizing qualifying telecommunications services.

(d) Lifeline Service Program. Lifeline Service is a retail local service offering available to qualifying low-income consumers.

(1) Provision of Lifeline Service. Lifeline Service shall be provided according to the following requirements.

(A) Designated Lifeline services. The eligible telecommunications carrier shall offer the services or functionalities enumerated in 47 Code of Federal Regulations §54.101(a)(1)-(9) (relating to Supported Services for Rural, Insular and High Cost Areas).

(B) Toll limitation.

(i) Toll limitation requirements. The eligible telecommunications carrier shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline Service. If the consumer elects to receive toll limitation, that service shall become part of the consumer's Lifeline Service.

(ii) Waiver. The commission may grant a waiver of the requirement of clause (i) of this subparagraph upon a finding that exceptional circumstances prevent an eligible telecommunications carrier from providing toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that eligible telecommunications carrier to complete network upgrades to provide toll limitation services.

(C) Disconnection of service.

(i) Disconnection prohibition. An eligible telecommunications carrier may not disconnect Lifeline Service for non-payment of toll charges.

(ii) Waiver. The commission may grant a waiver of clause (i) of this subparagraph if the eligible telecommunications carrier can demonstrate that:

(I) it would incur substantial costs in complying with this requirement;

(II) it offers toll limitation to its qualifying low-income consumers without charge; and

(III) telephone subscribership among low-income consumers in the eligible telecommunications carrier's service area is greater than or equal to the national subscribership rate for low- income consumers with an income below the poverty level for a family of four residing in the state.

(iii) Review by FCC.

(I) An eligible telecommunications carrier may file a petition for review of the commission decision pursuant to clause (ii) of this subparagraph with the Federal Communications Commission (FCC) within 30 days of that decision.

(II) If the commission has not acted on a petition to waive the requirement of clause (i) of this subparagraph within 30 days of the date of the filing of the waiver petition, the eligible telecommunications carrier may file the petition with the FCC on the 31st day after the initial filing date.

(iv) Subsequent waiver requests. An eligible telecommunications carrier may reapply for the waiver set forth in clause (ii) of this subparagraph.

(D) Service deposit prohibition.

(i) Service deposit requirements. An eligible telecommunications carrier may not collect a service deposit in order to initiate Lifeline Service, if the qualifying low-income consumer voluntarily elects toll blocking from the eligible telecommunications carrier.

(ii) Waiver. If a waiver for providing toll blocking has been granted pursuant to subparagraph (B)(ii) of this paragraph, an eligible telecommunications carrier may charge a service deposit.

(2) Lifeline support.

(A) Lifeline support amounts. Lifeline support amounts per qualifying low- income consumer shall be provided according to the provisions of this paragraph.

(i) Federal baseline Lifeline support amount. An eligible telecommunications carrier shall grant a waiver of the $3.50 monthly federal subscriber line charge (SLC) to qualifying low-income consumers. If the eligible telecommunications carrier does not charge the federal SLC, it shall apply the $3.50 federal baseline support amount to reduce its lowest tariffed residential rate for supported services.

(ii) State-approved $1.75 reduction. Pursuant to 47 Code of Federal Regulations §54.403 (relating to Lifeline Support Amount), an eligible telecommunications carrier shall give a qualifying low- income consumer a state-approved reduction of $1.75 in the monthly amount of intrastate charges paid.

(iii) Additional state reduction with federal matching. Pursuant to 47 Code of Federal Regulations §54.403, an eligible telecommunications carrier shall give a qualifying low-income consumer the following:

(I) an additional state-approved reduction of $3.50 in the monthly amount of intrastate charges; and

(II) a further federally approved reduction of $1.75.

(B) Recovery of support amounts.

(i) Federal baseline Lifeline support. An eligible telecommunications carrier shall be entitled to recover the support amount required by subparagraph (A)(i) of this paragraph pursuant to 47 Code of Federal Regulations §54.407 (relating to Reimbursement for offering Lifeline), through the federal USF.

(ii) State-approved $1.75 reduction. An eligible telecommunications carrier shall be entitled to recover federal Lifeline support pursuant to 47 Code of Federal Regulations §54.407 to recover the reduction amount required by subparagraph (A)(ii) of this paragraph.

(iii) Additional state reduction with federal matching.

(I) An eligible telecommunications carrier shall be entitled to recover support from the Texas Universal Service Fund to recover the reduction amount required by subparagraph (A)(iii)(I) of this paragraph. An eligible telecommunications carrier that is also an incumbent local exchange company (ILEC) as defined by §23.3 of this title (relating to Definitions) that offered, as of June 1, 1997, a tariffed $3.50 Lifeline Service rate discount in addition to the $3.50 waiver of the federal SLC, must reduce rates for services determined appropriate by the commission by an amount equivalent to the amount of support it is eligible to receive under this subclause. If such ILEC does not reduce its toll and access rates pursuant to this subclause, it shall not be eligible to receive support under this subclause.

(II) An eligible telecommunications carrier shall be entitled to recover federal Lifeline support pursuant to 47 Code of Federal Regulations §54.407 to recover the reduction amount required by subparagraph (A)(iii)(II) of this paragraph.

(C) Application of support amounts.

(i) Eligible telecommunications carriers that charge the federal SLC or equivalent federal charges shall apply the $3.50 federal baseline Lifeline support to waive a qualified low-income

consumer's federal SLC. The state-approved reductions of $1.75 and $3.50 and the additional federally approved reduction of $1.75 shall be applied to reduce the monthly intrastate end user charges paid by the qualifying low-income consumers.

(ii) Eligible telecommunications carriers that do not charge the federal SLC or equivalent federal charges shall apply the $3.50 federal baseline Lifeline support amount, plus the state-approved reductions of $1.75 and $3.50 and the additional federally approved reduction of $1.75 to reduce their lowest tariffed residential rate for the supported services and charge qualified low-income consumers the resulting amount.

(iii) The monthly discounted residential rate for qualified low-income consumers may not be reduced below $2.50.

(e) Link Up Service Program. This is a program certified by the FCC that provides qualifying low-income consumer with the following assistance:

(1) Services.

(A) A qualifying low-income consumer may receive a reduction in the eligible telecommunications carrier's customary charge for commencing telecommunications service for a primary single line connection at the consumer's principal place of residence. The reduction shall be half of the customary charge or $30, whichever is less.

(B) A qualifying low-income consumer may receive a deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed the consumer shall be for connection charges of up to $200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(2) Qualifying low-income consumer choice. A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (1)(A) and (B) of this subsection.

(3) Limitation on receipt. An eligible telecommunications carrier's Link Up program shall allow a qualifying low-income consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.

(f) Obligations of the consumer, TDHS, and the eligible telecommunications carrier.

(1) Obligations of the consumer. Consumers may apply for Lifeline Service and Link Up Service by completing and filing an application with TDHS. Consumers who are eligible for Lifeline Service and Link Up Service and who do not have telephone service must additionally initiate a request for service from their serving eligible telecommunications carrier.

(2) Obligations of TDHS. TDHS shall review the consumer's application form and shall determine if the consumer meets the eligibility criteria. TDHS shall provide each eligible telecommunications carrier with an initial list of consumers eligible for Lifeline Service and Link Up Service and shall provide an updated list to each eligible telecommunications carrier on a semi-annual basis.

(3) Obligations of eligible telecommunications carriers.

(A) Lifeline Service.

(i) The eligible telecommunications carrier shall provide Lifeline Service to all eligible consumers identified by TDHS within its service area if the existing service of those consumers meets the qualifications set forth in subsection (d)(1) of this section. The eligible telecommunications carrier shall identify those consumers on the TDHS list to whom it is providing telephone service and shall determine if the existing telephone service qualifies. Within 60 days after receipt of the list, the eligible telecommunications carrier shall begin reduced billing for those qualifying low-income consumers subscribing to qualifying services.

(ii) If the existing telephone service does not qualify, the eligible telecommunications carrier shall advise the eligible consumer by direct mail of changes necessary to satisfy Lifeline criteria. The eligible telecommunications carrier shall advise the eligible consumer by direct mail that persons choosing not to make necessary changes to their telephone service arrangements will not receive Lifeline Service and that the eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible consumer changes the telephone service to qualifying services or initiates new qualifying service, the eligible telecommunications carrier shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

(iii) The eligible telecommunications carrier shall notify TDHS on a semi- annual basis of changes in the status of its Lifeline Service consumers.

(B) Link Up Service. The eligible telecommunications carrier shall provide Link Up Service to all qualifying low-income consumers identified by TDHS within its service area, who have initiated a request for service pursuant to subsection (f)(1) of this section.

(C) Qualifying low-income consumer certification. An eligible telecommunications carrier shall obtain from the qualifying low-income consumer that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs identified in subsection (b)(1) of this section, and shall identify the program(s) from which that consumer receives benefits. On the same document, a qualifying low-income consumer must also agree to notify the eligible telecommunications carrier if that consumer ceases to participate in the program(s) identified in subsection (b)(1) of this section.

(g) Tariff requirement. Each carrier seeking designation as an eligible telecommunications carrier shall file a tariff to implement Lifeline Service and Link Up Service, or revise its existing tariff for compliance with this section and with applicable law, prior to filing its application for designation as an eligible telecommunications carrier. No other revision, addition, or deletion unrelated to Lifeline Service and Link Up Service shall be contained in the tariff application.

(h) Reporting requirements.

(1) TUSF. An eligible telecommunications carrier providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information.

(A) Initial reporting requirements. An eligible telecommunications carrier shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline plan meets the requirements of this section.

(B) Monthly reporting requirements. An eligible telecommunications carrier shall report monthly to the TUSF administrator the total number of qualified low-income consumers to whom Lifeline Service was provided for the month by the eligible telecommunications carrier.

(C) Other reporting requirements. An eligible telecommunications carrier shall report any other information required by the commission or the TUSF administrator.

(2) Federal Lifeline Service Program. An eligible telecommunications carrier shall file the following information with the administrator of the Federal Lifeline Program:

(A) information demonstrating that the eligible telecommunications carrier's Lifeline plan meets the criteria set forth in 47 Code of Federal Regulations Subpart E (relating to Universal Service Support for Low-Income Consumers);

(B) the number of qualifying low-income consumers served by the eligible telecommunications carrier;

(C) the amount of state assistance; and

(D) other information required by the administrator of the Federal Lifeline Program.

§23.143. Tel-Assistance Service.

(a) Application. This section applies to local exchange carriers (LECs) as defined by §23.3 of this title (relating to Definitions).

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

(1) Eligible consumer - In order to be eligible for Tel-Assistance Service, the consumer must:

(A) be a head of household and disabled, as determined by the Texas Department of Human Services (TDHS); and

(B) have a household income at or below the poverty level, as reported annually by the United States Office of Management and Budget in the Federal Register.

(2) Qualifying services -

(A) residential flat rate basic local exchange service;

(B) residential local exchange access service; and

(C) residential local area calling usage.

(3) Tel-Assistance Service - A program providing eligible consumers with a 65% reduction in the applicable tariff rate for qualifying services.

(4) TDHS - Texas Department of Human Services.

(c) Provision of Tel-Assistance Service. Each LEC shall provide Tel-Assistance Service as provided in this section. A consumer eligible for Tel-Assistance Service also qualifies for Lifeline Service and Link Up Service as provided in §23.142 of this title (relating to Lifeline Service and Link Up Service). Nothing in this section shall prohibit a person otherwise eligible to receive Tel-Assistance Service from obtaining and using telecommunications equipment or services designed to aid such person in utilizing qualifying telecommunications services.

(1) Rate reductions under Tel-Assistance Service.

(A) Each LEC shall provide Tel-Assistance Service to all eligible consumers within its certificated area in the form of a 65% reduction in the applicable tariff rate for the qualifying services provided.

(B) The reduction for local area calling usage shall be limited to an amount such that, together with the reduction for local exchange access service, the overall rate reduction does not exceed the comparable reduction applicable to flat rate service.

(2) Texas Universal Service Fund (TUSF) reimbursement. LECs providing Tel- Assistance Service to eligible consumers under this section are eligible for reimbursement from the TUSF of the lost revenue associated with the application of a 65% reduction in the applicable tariff rate for those accounts.

(d) Obligations of the consumer, TDHS, and the LEC.

(1) Consumer. Consumers may apply for Tel-Assistance Service by obtaining an application form from TDHS. Persons who are eligible for Tel-Assistance Service, but do not have telephone service at the time TDHS provides its eligibility list to LECs, are responsible for initiating a request for qualifying services from their serving LEC.

(2) TDHS. TDHS shall review the consumer's application form and shall determine if the consumer meets the eligibility criteria. TDHS shall provide each LEC with an initial list of persons eligible for Tel-Assistance Service and shall provide an updated list to each LEC on a semi-annual basis.

(3) LEC.

(A) The LEC shall provide Tel-Assistance Service to all eligible consumers identified by TDHS within its certificated area if the existing service of those consumers meets the qualifications set forth in subsection (b)(2) of this section. The LEC shall identify those consumers on the TDHS list to whom it is providing telephone service and shall determine if the existing telephone service qualifies. Within 60 days after receipt of the list, the LEC shall begin reduced billing for those eligible consumers subscribing to qualifying services.

(B) If the existing telephone service does not qualify, the LEC shall advise the eligible consumer by direct mail of changes necessary to satisfy Tel- Assistance Service criteria. The LEC shall advise the eligible consumer by direct mail that persons choosing not to make necessary changes to their telephone service arrangements will not receive Tel-Assistance Service and that the eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Tel-Assistance Service, or for service order charges associated with transferring the account into Tel-Assistance Service. If the eligible consumer changes the existing telephone service to qualifying services or initiates new qualifying service, the LEC shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

(C) The LEC shall notify TDHS on a semi-annual basis of changes in the status of its Tel-Assistance Service consumers.

(e) Specific service exceptions for Tel-Assistance Service. No other local voice service may be provided to the dwelling place of a Tel-Assistance Service consumer, nor may single or party line optional extended area service, optional extended area calling service, foreign zone service or foreign exchange service be provided to a Tel-Assistance Service consumer.

(f) Retroactive prohibition for Tel-Assistance Service. Tel-Assistance Service shall not be available on a retroactive basis except for such instances in which the LEC failed to initiate reduced billing within the time frame established in subsection (d)(3)(A) of this section.

(g) Termination of Tel-Assistance Service. Consumer certification is provided by TDHS subject to annual renewal. Reduced billing will continue until such time as either the TDHS notifies the LEC that the consumer is no longer eligible or the consumer establishes telephone service arrangements that do not satisfy the qualifications for Tel-Assistance Service. After Tel-Assistance Service is established, if the recipient requests a change in telephone service arrangements such that the new arrangements do not meet the qualifications, before making such changes, the LEC shall advise the consumer by direct mail that the requested changes will result in removal of the Tel-Assistance Service discount. If the consumer then chooses to have such changes made, the LEC shall terminate the discount at the time the change of service becomes effective.

(h) Reporting requirements for the provision of Tel-Assistance Service. LECs shall file monthly reports with the TUSF administrator detailing the lost revenues associated with the 65% discount applied to Tel-Assistance Service accounts. The LECs shall also file activity reports showing the total number of accounts transferred into and out of Tel-Assistance Service in the previous month and the total number of Tel-Assistance Service accounts at the end of the month.

(i) Tariff requirement. Each LEC shall file a tariff to implement Tel-Assistance Service in compliance with this section and with applicable law within 30 days of the effective date of this section or within 30 days of beginning to provide service, whichever is later. No other revision, addition, or deletion unrelated to Tel-Assistance Service shall be contained in the tariff.

§23.147. Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) Purpose. This section provides the requirements for the commission to designate local exchange companies (LECs) as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §23.133 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §23.134 of this title (relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan). Only LECs designated by the commission as ETPs shall qualify to receive universal service support under these programs.

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

(1) Certificated service area - The geographic area within which a LEC has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN) or a certificate of operating authority (COA) issued by the commission.

(2) ETP service area - The geographic area, determined by the commission, containing high cost rural areas which are eligible for TUSF support under §23.133 or §23.134 of this title.

(c) Requirements for establishing ETP service areas.

(1) THCUSP service area. THCUSP service area shall be based upon census block groups (CBGs) or other geographic area as determined appropriate by the commission. A LEC may be designated an ETP for any or all CBGs that are wholly or partially contained within its certificated service area. An ETP must serve an entire CBG, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire CBG, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(d) Criteria for designation of ETPs.

(1) LECs. A LEC, as defined in §23.3 of this title (relating to Definitions), shall be eligible to receive TUSF support pursuant to §23.133 or §23.134 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the LEC has been designated an eligible telecommunications carrier, pursuant to §23.148 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds (FUSF)), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the LEC defines its ETP service area pursuant to subsection (c) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §23.133 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the LEC offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

(D) the LEC renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §23.61(c),(d) and (e) of this title (relating to Telephone Utilities);

(E) the LEC offers services in compliance with §23.142 of this title (relating to Lifeline Service and Link Up Service) and §23.143 of this title (relating to Tel-Assistance Service); and

(F) the LEC advertises the availability of, and charges for, supported services using media of general distribution.

(2) ILECs. If the LEC is an ILEC, as defined in §23.3 of this title, it shall be eligible to receive TUSF support pursuant to §23.133 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) if the ILEC is regulated pursuant to Chapter 58 or 59 of the Public Utility Regulatory Act it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) if the ILEC is not regulated pursuant to Chapter 58 or 59 of the Public Utility Regulatory Act it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(e) Designation of more than one ETP.

(1) In areas not served by small or rural ILECs, as defined in §23.134(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §23.134(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(f) Proceedings to designate LECs as ETPs.

(1) Initial proceeding. In order to be considered in the initial proceeding under this section for designation as an ETP, a LEC operating with a certificate of convenience and necessity (CCN) or a certificate of operating authority (COA) as of the effective date of this section shall file its application to be designated as an ETP for a requested service area within 30 days of the effective date of this section.

(2) Subsequent applications.

(A) At any time, a LEC operating with a CCN or COA may seek commission approval to be designated an ETP for a requested service area.

(B) In order to receive support under §23.133 or §23.134 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(C) If an ETP receiving support under §23.133 or §23.134 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(g) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) Notice of application. Notice shall be published in the Texas Register. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application. A LEC seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) LEC. The application shall:

(I) show that the applicant is a LEC as defined in §23.3 of this title;

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §23.133 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §23.133 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that that the applicant does not offer the designated services, as defined in §23.133 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §23.61 (c), (d), and (e) of this title;

(VI) show that the applicant offers Lifeline, Link Up, and Tel- Assistance services in compliance with §23.142 and §23.143 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §23.133 of this title, using media of general distribution;

(VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (d)(2) of this section.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the LEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with sub-

stantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within 10 days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §23.133 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (d) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (d) may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within 10 days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(h) Relinquishment of ETP designation. A LEC may seek to relinquish its ETP designation.

(1) Area served by more than one ETP. The commission shall permit a LEC to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing LEC's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) Area where the relinquishing LEC is the sole ETP. In areas where the relinquishing LEC is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the LEC seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (i) of this section.

(3) Relinquishment for non-compliance. The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (d) of this section. The commission shall revoke the ETP designation of any LEC determined not to be in compliance with subsection (d) of this section.

(i) Auction procedure for replacing the sole ETP in an area. In areas where a LEC is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (g)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) Announcement of auction. Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the Texas Register of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §23.133 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) Bidding procedure. Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the Texas Register.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (d)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

§23.148. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) Purpose. This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers to receive support from the federal universal service

fund (FUSF). Only common carriers designated by the commission pursuant to 47 United States Code §214(e) (relating to Provision of Universal Service) as eligible for federal universal service support may qualify to receive universal service support under the FUSF.

(b) Service areas. The commission may designate eligible telecommunications carrier service areas according to the following criteria.

(1) Non-rural service area. To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an eligible telecommunications carrier.

(2) Rural service area. In the case of areas served by a rural telephone company, as defined in §23.134 of this title (relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(c) Criteria for determination of eligible telecommunications carriers. A common carrier shall be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 Code of Federal Regulations §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(d) Criteria for determination of receipt of federal universal service support. In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (c) of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 Code of Federal Regulations §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(e) Designation of more than one eligible telecommunications carrier.

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §23.134 of this title, the commission shall designate, upon application, more than one eligible telecommunications carrier in a service area so long as each additional carrier meets the requirements of subsection (b)(1) of this section and subsection (c) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §23.134 of this title, the commission may designate as an eligible telecommunications carrier a carrier that meets the requirements of subsection (b)(2) of this section and subsection (c) of this section if the commission finds that the designation is in the public interest.

(f) Proceedings to designate eligible telecommunications carriers.

(1) Initial proceeding. In order to be considered in the initial proceeding under this section for designation as an eligible telecommunications carrier, a common carrier operating as of the effective date of this section shall file its application to be designated as an eligible telecommunications carrier for a requested service area within 30 days of the effective date of this section.

(2) Subsequent applications.

(A) At any time, a common carrier may seek commission approval to be designated an ETP for a requested service area.

(B) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring eligible telecommunications carrier shall file an application, within 30 days after the date of the purchase, to amend its eligible telecommunications carrier service area to include those geographic areas that are eligible for support.

(C) If an eligible telecommunications carrier receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its eligible telecommunications carrier designation to exclude from its designated service area those exchanges for which it was receiving support.

(g) Application requirements and commission processing of applications.

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice shall be published in the Texas Register. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, 10 days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711- 3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking eligible telecommunications carrier designation. A common carrier that seeks to be designated as an eligible telecommunications carrier shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an eligible telecommunications carrier;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) to any consumer

in the service area for which it seeks designation as an eligible telecommunications carrier;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an eligible telecommunications carrier;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking eligible telecommunications carrier designation and receipt of federal universal service support. A common carrier that seeks to be designated as an eligible telecommunications carrier and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low- income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within 10 days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (b) of this section; and

(VI) if, in areas served by a rural telephone company, the eligible telecommunications carrier designation is consistent with the public interest.

(ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within 10 days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall

be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(E) Waiver. In the event that an otherwise eligible telecommunications carrier requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single- party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single- party service, access to enhanced 911 service, or toll limitation services.

(h) Designation of eligible telecommunications carrier for unserved areas. If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 United States Code §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(i) Relinquishment of eligible telecommunications carrier designation. A common carrier may seek to relinquish its eligible telecommunications carrier designation.

(1) Area served by more than one eligible telecommunications carrier. The commission shall permit a common carrier to relinquish its designation as an eligible telecommunications carrier in any area served by more than one eligible telecommunications carrier upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) Area where the common carrier is the sole eligible telecommunications carrier. In areas where the common carrier is the only eligible telecommunications carrier, the commission may permit it to relinquish its eligible telecommunications carrier designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier; and

(B) commission designation of a new eligible telecommunications carrier for the service area or areas.

§23.150. Administration of Texas Universal Service Fund (TUSF).

(a) Purpose. The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).

(b) Programs included in the TUSF.

(1) Section 23.133 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));

(2) Section 23.134 of this title (relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan);

(3) Section 23.136 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);

(4) Section 23.138 of this title (relating to Additional Financial Assistance (AFA));

(5) Section 23.142 of this title (relating to Lifeline Service and Link Up Service);

(6) Section 23.143 of this title (relating to Tel-Assistance Service);

(7) Section 23.144 of this title (relating to Telecommunications Relay Service);

(8) Section 23.145 of this title (relating to Specialized Equipment Distribution);

(9) Section 23.147 of this title (relating to Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(10) Section 23.148 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

(11) Section 23.150 of this title (relating to Administration of Texas Universal Service Funds).

(c) Responsibilities of the commission. The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.

(1) Establishing, monitoring, and supervising TUSF administration. The commission reserves the exclusive power to establish and revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.

(2) Annual audit. The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.

(3) Inquiry into administration of the TUSF. The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.

(4) Selection of the TUSF administrator.

(A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process. The commission shall issue a request for proposal, within 30 days of the effective date of this section, to solicit bids from qualified entities.

(B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.

(5) Contract term of the TUSF administrator. The commission shall determine the duration of the TUSF administrator's

contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60- days written notice.

(d) TUSF administrator. The TUSF administrator serves at the discretion of the commission.

(1) Technical requirements of the TUSF administrator. The TUSF administrator shall:

(A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support mechanisms, and not have a direct financial interest in the universal service support mechanisms established by the commission;

(B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and

(C) be bonded or bondable.

(2) Duties of the TUSF administrator. The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator. The TUSF administrator's general duties shall include, but not be limited to:

(A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;

(B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;

(C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications providers are in compliance with the Public Utility Regulatory Act §56.022;

(D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in compliance with the section or sections of this title under which they are eligible to receive support;

(E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;

(F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;

(G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;

(H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §23.147 of this title and any reporting requirements; and

(I) performing other duties as determined by the commission.

(e) Transition from existing USF programs to the TUSF.

(1) Transition requirements for the TUSF administrator. In order to facilitate a smooth transition from current support mechanisms in place prior to the effective date of this section to those that are mandated herein, the commission may appoint the current USF administrator, the Texas Exchange Carrier Association (TECA), to administer the TUSF on an interim basis, for a period of no less than six months beginning with the effective date of this section, provided that TECA structures a new TUSF Board of Directors to reflect the composition of the telecommunications industry as a whole. No more than 50% of the new Board shall represent incumbent local exchange carriers (ILECs). The remainder of the board shall be composed of competitive local service providers, interexchange carriers, wireless carriers, and any other telecommunications providers.

(2) Continuation of assessments and disbursements for periods prior to the implementation of TUSF programs. The TUSF administrator shall administer all outstanding assessment and disbursement obligations to support mechanisms existing on the effective date of this section, for periods prior to the implementation date of the programs in subsection (b) of this section.

(3) Implementation of programs included in the TUSF and termination of existing support mechanisms. The presiding officer in the proceeding conducted pursuant to subsection (f)(2)(A) of this section or the TUSF administrator shall ensure that the collection of assessments from telecommunication providers pursuant to subsection (g) of this section, the disbursement of support amounts to ETPs pursuant to subsection (h) of this section, and the termination of support mechanisms existing on the effective date of this section, occur on a uniform date. In the event that interim assessments and disbursements are necessary prior to the establishment of final assessment and disbursement levels, they shall be subject to true-up to the final level of funding.

(f) Determination of the amount needed to fund the TUSF.

(1) Amount needed to fund the TUSF. The amount needed to fund the TUSF shall be composed of the following elements.

(A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

(i) Texas High Cost Universal Service Plan, §23.133 of this title;

(ii) Small and Rural ILEC Universal Service Plan, §23.134 of this title;

(iii) Implementation of the Public Utility Regulatory Act §56.025, §23.136 of this title;

(iv) Additional Financial Assistance, §23.138 of this title;

(v) Lifeline Service and Link Up Service, §23.142 of this title;

(vi) Tel-Assistance Service, §23.143 of this title;

(vii) Telecommunications Relay Service, §23.144 of this title; and

(viii) Specialized Equipment Distribution, §23.145 of this title.

(B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), any costs incurred by the Texas Department of Human Services caused by its administration of the Lifeline, Link Up,

and Tel-Assistance programs, and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Equipment Distribution and the Telecommunications Relay Service programs.

(C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

(2) Determination of amount needed.

(A) Initial determination. Within 30 days of the effective date of this section, the commission shall initiate a proceeding to determine the amount needed to fund the TUSF for 1998 or the commission may delegate the initial determination to the TUSF administrator.

(B) Subsequent determinations. After the initial determination, the TUSF administrator shall determine, on a periodic basis approved by the commission, the amount needed to fund the TUSF.

(g) Assessments for the TUSF.

(1) Providers subject to assessments. The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.

(2) Basis for assessments. Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151, Tax Code.

(3) Assessment. Each telecommunications provider shall pay its TUSF assessment each month as calculated using the following procedures.

(A) Calculation of assessment rate. The TUSF administrator shall establish an assessment rate to be applied to all telecommunications providers.

(i) Initial assessment rate. The initial assessment rate shall be computed by dividing the amount needed as determined pursuant to subsection (f)(2)(A) of this section, annualized, by the total of all telecommunications providers' taxable telecommunications receipts reported under Chapter 151, Tax Code for the period January 1, 1997, to December 31, 1997.

(ii) Subsequent assessment rates. The TUSF administrator shall determine, on a periodic basis approved by the commission, subsequent assessment rates.

(B) Calculation of assessment amount. Payments to the TUSF shall be computed by multiplying the assessment rate determined pursuant to subparagraph (A) of this paragraph by the basis for assessments as determined pursuant to subsection (g)(2) of this section.

(4) Reporting requirements. Each telecommunications provider shall be required to report the following information to the commission or the TUSF administrator.

(A) Initial reporting. No later than February 15, 1998, each telecommunications provider shall report total taxable telecommunications receipts reported under Chapter 151, Tax Code, for the period January 1, 1997 to December 31, 1997.

(B) Subsequent reporting. Every month each telecommunications provider shall report taxable telecommunications receipts under Chapter 151, Tax Code for the month.

(5) Recovery of assessments. A telecommunications provider may recover the amount of its TUSF assessment from its retail customers, except Lifeline, Link Up, and Tel- Assistance customers. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills;

(i) the surcharge must be listed on the retail customers' bills as "the universal service fund surcharge"; and

(ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline, Link Up, and Tel-Assistance customers.

(B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.

(C) Tariff changes. A telecommunications provider choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes to its tariff and provide supporting documentation for the method of recovery.

(D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.

(6) Disputing assessments. Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(h) Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.

(1) ETPs, ILECs, other entities, and agencies.

(A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

(i) Texas High Cost Universal Service Plan;

(ii) Small and Rural ILEC Universal Service Plan;

(iii) Lifeline Service and Link Up Service; and/or

(iv) Tel-Assistance Service.

(B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:

(i) Implementation of the Public Utility Regulatory Act §56.025; and/or

(ii) Additional Financial Assistance program.

(C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:

(i) Telecommunications Relay Service; and/or

(ii) Specialized Equipment Distribution program.

(D) Agencies. The commission, the Texas Department of Human Services, the Texas Commission for the Deaf and Hard of Hearing, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of the TUSF.

(2) Reporting requirements.

(A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.

(3) Disbursements. The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange carrier (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 30 days of the due date of their reports.

(i) True-up. The assessment amount determined pursuant to subsections (f) and (g) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.

(j) Sale or transfer of exchanges.

(1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §23.134 of this title, shall receive the per- line support amount for which those exchanges were eligible prior to the sale or transfer.

(2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant §23.133 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.

(k) Proprietary information. The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:

(1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.

(2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §23.150(k)".

(3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.

(4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

This agency 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 January 21, 1998.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 10, 1998
Proposal publication date: August 26,1997
For further information, please call: (512) 936–7308

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16 TAC §23.144

The Public Utility Commission of Texas (PUC) adopts new §23.144, relating to Telecommunications Relay Service, with changes to the proposed text published in the August 26, 1997 *Texas Register* (22 TexReg 8513). This new rule is adopted under Project Number 17714.

The section establishes procedures governing a statewide telecommunications relay service for individuals who are hearing-impaired or speech-impaired using specialized telecommunications devices and operator translations.

No comments were received.

References to the Public Utility Regulatory Act have been updated in subsections (b) and (e). These are the only changes from the proposed text. Certain of these changes relate to the adoption of 1997 Texas General Laws Chapter 149, which amends Texas Revised Civil Statutes Annotated Article 1446c-0, §§3.604, 3.608, 3.611, 3.612 and 3.613 without reference to the repeal of that article by 1997 Texas General Laws Chapter 166, §9. For the text of the amendment to §3.604, see the note following Texas Utilities Code Annotated §56.110 (Vernon 1998). For the text of the amendment to §3.608, see the note following Texas Utilities Code Annotated §56.021 (Vernon 1998). For the text of amendments to §§3.611, 3.612 and 3.613, see the note following Texas Utilities Code Annotated §56.102 (Vernon 1998).

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.002, 56.021, and 56.102(a) (Vernon 1998) (PURA) and 1997 Texas General Laws Chapter 149. PURA §14.002 provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §56.021 authorizes the commission to adopt and enforce rules regarding a universal service fund; and PURA §56.102(a) authorizes the commission to adopt and enforce rules establishing a statewide telecommunications relay access service for the hearing-impaired and speech-impaired.

Cross Index to Statutes: PURA §§14.002, 56.021, and 56.102(a); and 1997 Texas General Laws Chapter 149.

§23.144. Telecommunications Relay Service.

(a) Purpose. The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech- impaired using specialized telecommunications devices and operator translations. Telecommunications relay service shall be provided on a statewide basis by one telecommunications carrier. Certain aspects of telecommunications relay service operations are applicable to local exchange carriers and other telecommunications providers.

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

(1) Carrier of choice - An option that allows an individual to choose an interexchange carrier for long distance calls made through TRS.

(2) Equipment distribution program - The program described in Substantive Rule §23.145 of this title (relating to Specialized Equipment Distribution).

(3) Hearing carryover - A technology that allows an individual who is speech- impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the TRS operator.

(4) Mandatory minimum standards - The standards established by the Federal Communications Commission, outlining basic mandatory TRS.

(5) Print translations - the temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(6) Relay Texas - The name by which statewide TRS is known.

(7) Relay Texas administrator - The individual employed by the commission to oversee the administration of statewide TRS.

(8) TRS - Telecommunications relay service, a service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(9) TRS carrier - The telecommunications carrier selected by the commission to provide statewide TRS.

(10) TUSF - The Texas Universal Service Fund authorized by Texas Utilities Code Annotated §56.021 and 1997 Texas General Laws Chapter 149, §4.

(11) Voice carryover - A technology that allows an individual who is hearing- impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the TRS operator.

(c) Provision of TRS. TRS shall provide individuals who are hearing-impaired or speech- impaired with access to the telecommunications network in Texas equal to that provided to other customers.

(1) Components of TRS. TRS shall meet the mandatory minimum standards defined in subsection (b)(4) of this section and further shall consist of the following:

(A) switching and transmission of the call;

(B) oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices;

(C) sufficient operators and facilities to meet the following grade and quality of service standards established by the commission for TRS:

(i) the operator answering performance standards listed in §23.61(e)(3)(A)(i) and (3)(B) of this title (relating to Telephone Utilities); and

(ii) not more than one out of one hundred calls shall encounter a busy signal when calling the TRS numbers;

(D) appropriate procedures for handling emergency calls;

(E) confidentiality regarding existence and content of conversations;

(F) capability of providing sufficient information to allow calls to be accurately billed;

(G) capability of providing for technologies such as hearing carryover or voice carryover;

(H) operator training to relay the contents of the call as accurately as possible without intervening in the communications;

(I) operator training in American Sign Language and familiarity with the special communications needs of individuals who are hearing-impaired or speech-impaired;

(J) capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;

(K) capability of providing both inbound and outbound intrastate and interstate service;

(L) capability for carrier of choice; and

(M) other service enhancements approved by the commission.

(2) Conditions for interstate service. The TRS carrier shall not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS shall be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records shall be maintained for intrastate TRS and interstate TRS.

(3) Rates and charges. The following rates and charges shall apply to TRS:

(A) Local calls. The calling and called parties shall bear no charges for calls originating and terminating within the same toll-free local calling scope.

(B) Intrastate long distance calls. The TRS carrier shall discount its tariffed intrastate rates by 50% for TRS users.

(C) Access charges. Local exchange carriers shall not impose access charges on calls that make use of this service and which originate and terminate within the same toll-free local calling scope.

(D) Billing and collection services. Upon request by the TRS carrier, local exchange carriers shall provide billing and collection services in support of this service at just and reasonable rates.

(d) Contract for the TRS carrier.

(1) Selection. On or before April 1, 2000, the commission shall issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech- impaired in having access to a high quality and technologically-advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The commission's determination shall include evaluations of charges for the service, service enhancements proposed by the offerers, and technological sophistication of the network proposed by the offerers. The commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state.

(2) Location. The operator centers used to provide statewide TRS shall be located in Texas.

(3) Contract administration.

(A) Contract amendments. All recommendations for amendments to the contract shall be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically shall approve any amendment that will increase the cost of TRS.

(B) Reports. The TRS carrier and telecommunications providers shall submit reports of their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.

(C) Compensation. The TRS carrier shall be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:

(i) Reimbursement shall include the TRS costs that are not paid by the calling or the called party, except the TRS carrier shall not be reimbursed for the 50% discount set forth in subsection (c)(3)(B) of this section.

(ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.

(iii) The TRS carrier shall submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF shall make a disbursement in the approved amount.

(e) Advisory Committee. The commission shall appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the equipment distribution program, as specified by Texas Utilities Code Annotated §56.111 (Vernon 1998) and 1997 Texas General Laws Chapter 149, §3. The Relay Texas administrator shall serve as a liaison between the RTAC and the commission. The Relay Texas administrator shall ensure that the RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

(1) Composition. The commission shall appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. The RTAC shall be composed of:

(A) one deaf person recommended by the Texas Deaf Caucus;

(B) one deaf person recommended by the Texas Association of the Deaf;

(C) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(D) one hearing-impaired person recommended by the American Association of Retired Persons;

(E) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(F) one speech-impaired person and one speech-impaired and hearing- impaired person recommended by the Coalition of Texans with Disabilities;

(G) two representatives of telecommunications utilities, one representing a local exchange carrier and one representing a telecommunications carrier other than a local exchange carrier, chosen from a list of candidates provided by the Texas Telephone Association;

(H) two persons, at least one of whom is deaf, with experience in providing relay services, recommended by the Texas Commission for the Deaf; and

(I) two public members recommended by organizations representing consumers of telecommunications services.

(2) Conditions of membership. The term of office of each RTAC member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term. RTAC members shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(3) Responsibilities. The RTAC shall undertake the following responsibilities:

(A) monitor the establishment, administration, and promotion of the statewide TRS;

(B) advise the commission regarding the pursuit of services that meet the needs of individuals who are hearing-impaired or speech-impaired in communicating with other users of telecommunications services;

(C) advise the commission regarding issues related to the contract between the TRS carrier and the commission, including any proposed amendments to such contract;

(D) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding issues related to the equipment distribution program.

(4) Committee activities report. After each RTAC meeting, the Relay Texas administrator shall prepare a report to the commission regarding the RTAC activities and recommendations.

(A) The Relay Texas administrator shall file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

(i) the minutes of the meeting;

(ii) a memo summarizing the meeting; and

(iii) a list of items, recommended by the RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.

(B) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.

(5) Evaluation of RTAC costs and effectiveness. The commission shall evaluate the advisory committee annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with the RTAC, TRS, or the equipment distribution program shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

This agency 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 January 21, 1998.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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16 TAC §23.145

The Public Utility Commission of Texas adopts new §23.145, relating to the Specialized Equipment Distribution, with changes to the proposed text published in the August 26, 1997 *Texas Register* (22 TexReg 8516). This new rule is adopted under Project Number 17510.

The section establishes procedures, including those for reimbursement of certain vendors, for an equipment distribution program that will provide financial assistance to certain deaf, hearing- impaired, or speech-impaired individuals for the purchase of specialized equipment to provide functionally equivalent telephone network access. The equipment distribution program was authorized by 1997 Texas General Laws Chapter 149.

No comments were received.

In order to accommodate restructuring of all rules relating to the Universal Service Fund in a more organized manner, the commission adopts new §23.145 with an effective date of June 1, 1998. In the meantime, the equipment distribution program will be governed by the provisions of existing §23.53, relating to the Universal Service Fund. Pursuant to Texas Government Code Annotated §2001.036(a)(1) (Vernon 1998), the commission in this circumstance must state in the section any effective date beyond 20 days after filing with the secretary of state. For this reason, the commission adds new subsection (e) specifying the June 1, 1998 effective date.

References to the Public Utility Regulatory Act have also been updated in subsections (b) and (c). Certain of these changes relate to the adoption of 1997 Texas General Laws Chapter 149, which amends Texas Revised Civil Statutes Annotated Article 1446c-0, §§3.604, 3.608, 3.611, 3.612 and 3.613 without reference to the repeal of that article by 1997 Texas General Laws Chapter 166, §9. For the text of the amendment to §3.604, see the note following Texas Utilities Code Annotated §56.110 (Vernon 1998). For the text of the amendment to §3.608, see the note following Texas Utilities Code Annotated §56.021 (Vernon 1998). For the text of amendments to §§3.611, 3.612 and 3.613, see the note following Texas Utilities Code Annotated §56.102 (Vernon 1998).

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and 1997 Texas General Laws Chapter 149, which requires the commission to adopt rules that allow a telecommunications utility to recover the costs of the equipment distribution program for which it has been assessed by the universal service fund.

Cross Index to Statutes: PURA §14.002 and 1997 Texas General Laws Chapter 149.

§23.145. Specialized Distribution Program.

(a) Purpose. The provisions of this section are intended to establish procedures for an equipment distribution program and for reimbursement to vendors who submit vouchers issued under the program.

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

(1) EDP voucher - a voucher issued by TCDHH under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(2) Equipment distribution program (EDP) - the program to assist individuals who are deaf or hard of hearing or who have an impairment of speech to purchase specialized telecommunications devices for telephone service access, authorized by 1997 Texas General Laws Chapter 149, to be jointly administered by the commission and TCDHH.

(3) RTAC - the Relay Texas Advisory Committee authorized by the Public Utility Regulatory Act, Texas Utilities Code Annotated §56.110 (Vernon 1998) (PURA) and 1997 Texas General Laws Chapter 149.

(4) TCDHH - the Texas Commission for the Deaf and Hard of Hearing.

(5) TUSF - the Texas Universal Service Fund authorized by PURA, Texas Utilities Code Annotated §56.021 (Vernon 1998) and 1997 Texas General Laws Chapter 149.

(c) Program responsibilities.

(1) TCDHH responsibilities. TCDHH is responsible for:

(A) Adopting rules and procedures regarding the issuance of EDP vouchers to eligible individuals;

(B) Establishing a database containing sufficient information to enable the commission to verify the issuance of a particular EDP voucher; and

(C) Depositing amounts paid by eligible individuals for EDP vouchers into the TUSF.

(2) Commission responsibilities. The commission is responsible for:

(A) Adopting rules and procedures regarding the reimbursement to vendors for properly redeemed EDP vouchers;

(B) Administering the TUSF to ensure adequate funding of the equipment distribution program; and

(C) Appointing and providing administrative support for the RTAC, in accordance with PURA, Texas Utilities Code Annotated §56.110 and §56.112 (Vernon 1998).

(d) Program administration.

(1) Vendor registration. To facilitate the timely reimbursement of EDP vouchers, the TUSF administrator may specify that a vendor who accepts EDP vouchers shall register with the administrator by providing the vendor's name, contact person, address, telephone number, facsimile number (if available), and information sufficient to permit the administrator to reimburse the vendor by direct deposit rather than by check.

(2) Vendor reimbursement. A vendor who exchanges an EDP voucher for the purchase of approved equipment in accordance with the terms of the equipment distribution program specified by TCDHH shall be eligible for reimbursement of the lesser of the face value of the EDP voucher or the actual price of the equipment. TUSF disbursements shall be made only upon receipt from the vendor of a completed EDP voucher and a receipt showing the actual price of the equipment exchanged for the EDP voucher. TUSF disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable, including investigation of whether the presentation of an EDP voucher represents a valid transaction for equipment under the equipment distribution program. The TUSF administrator shall ensure that reimbursement to vendors for EDP vouchers shall be issued within 45 days after the EDP voucher is received by the TUSF administrator.

(e) Effective Date. This section is effective on June 1, 1998.

This agency 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 January 21, 1998.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter P. Professional Nurses' Student Loan Repayment Program

19 TAC §21.509

The Texas Higher Education Coordinating Board adopts amendment to Chapter 21, Subchapter P, §21.509, concerning Professional Nurses' Student Loan Repayment Program (Priorities of Application Approval) without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9570).

There were no comments received concerning the proposed amendment.

The amendment is adopted under Texas Education Code, §61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Professional Nurses' Student Loan Repayment Program (Priorities of Application Approval).

This agency 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 January 23, 1998.

TRD-9801096
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordination Board
Effective date: February 12, 1998
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For further information, please call: (512) 483–6162

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Subchapter HH. Exemption Program for Texas Air and Army National Guard/ROTC Students

19 TAC §21.1055, §21.1057

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter HH, §21.1055 and §21.1057, concerning Exemption Program for Texas Air and Army National Guard/ROTC Students without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9570).

There were no comments received concerning the proposed rules.

The amendments are adopted under Texas Education Code, §61.027 and §54.212 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Exemption Program for Texas Air and Army National Guard/ROTC Students.

This agency 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 January 23, 1998.

TRD-9801097
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordination Board
Effective date: February 12, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 483–6162

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Chapter 22. Grant and Scholarship Programs

Subchapter F. Provisions for the Scholarship Programs for Vocational Nursing Student

19 TAC §22.103, §22.104

The Texas Higher Education Coordinating Board adopts amendments to Chapter 22, Subchapter F, §22.103 and §22.104, concerning Provisions for the Scholarship Programs for Vocational Nursing Students without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9570).

There were no comments received concerning the proposed amendments.

The amendments are adopted under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Vocational Nursing Students.

This agency 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 January 23, 1998.

TRD-9801098
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordination Board
Effective date: February 12, 1998
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For further information, please call: (512) 483–6162

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Subchapter G. Provisions for the Scholarship Programs for Professional Nursing Students

19 TAC §§22.123, 22.124, 22.125

The Texas Higher Education Coordinating Board adopts amendments to Chapter 22, Subchapter G, §22.123, §22.124, §22.125, concerning Provisions for the Scholarship Programs for Professional Nursing Students without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9570).

There were no comments received concerning the proposed amendments.

The amendments are adopted under Texas Education Code, §61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Professional Nursing Students.

This agency 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 January 23, 1998.

TRD-9801099
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordination Board
Effective date: February 21, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 483–6162

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Subchapter I. Provisions for the Fifth-Year Accounting Student Scholarship Program

22 TAC §22.163

The Texas Higher Education Coordinating Board adopts amendment to Chapter 22, Subchapter I, §22.163, concerning Provisions for the Fifth-Year Accounting Student Scholarship Program (Eligible Students) without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9570).

There were no comments received concerning the proposed amendment.

The amendment is adopted under Texas Education Code, §61.755 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program (Eligible Students).

This agency 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 January 23, 1998.

TRD-9801100
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordination Board
Effective date: February 12, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 483–6162

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Part II. Texas Education Agency

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter B. State Adoption of Instructional Materials

19 TAC §66.28

The Texas Education Agency (TEA) adopts new §66.28, concerning the identification of the essential knowledge and skills that will be used in evaluating textbooks. The new section is adopted with changes to the proposed text as published in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11621).

The new section is necessary to specify essential knowledge and skills that would be used to evaluate instructional materials submitted under Proclamation 1997 of the State Board of Education (SBOE) Advertising for Bids on New Instructional Materials. The Texas Education Code, Chapter 28, requires that the SBOE, by rule, identify the Texas essential knowledge and skills (TEKS) that will be used in evaluating textbooks. In July 1997, the SBOE adopted new TEKS for the broad categories of English Language Arts and Reading and Spanish Language Arts and Reading. The newly adopted TEKS for these two categories do not, however, specify which of the TEKS are to be used in the individual subject areas that will be adopted.

The following change has been made to the rule since it was published as proposed.

Subsection (b) of the rule has been deleted since the SBOE has rule-making authority in this area.

No public comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §28.002, which authorizes the State Board of Education, to identify the essential knowledge and skills.

§66.28. Adoption by Reference.
The sections titled "Content Requirements" in the *1997 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the agency's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 1997. A copy of the *1997 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

This agency 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 January 26, 1998.

TRD-9801133
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: February 15, 1998
Proposal publication date: November 28, 1997
For further information, please call: (512) 463-9701

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Chapter 109. Budgeting, Accounting, and Auditing

Subchapter C. Adoptions by Reference

19 TAC §109.41

The Texas Education Agency (TEA) adopts an amendment to §109.41, concerning the "Financial Accountability System Resource Guide." The amendment is adopted without changes to the proposed text as published in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11622) and will not be republished.

Section 109.41 adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting; budgeting; purchasing; auditing; site-based decision making; data collection and reporting; and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code and other state statutes relating to public school finance. The adopted amendment will improve financial accountability for educational programs in the Texas school system and keep financial management practices current with changes in state law and federal rules and regulations. Under §109.41(b), the commissioner of education shall amend the "Financial Accountability System Resource Guide," adopting it by reference, as needed.

No public comments have been received since the section was published as proposed.

The amendment is adopted under the Texas Education Code, §§7.102(b)(33), 44.007, and 44.008, which authorizes the State Board of Education to adopt rules relating to school district budgets and audits of school district fiscal accounts.

This agency 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 January 26, 1998.

TRD-9801142
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: February 15, 1998
Proposal publication date: November 28, 1997
For further information, please call: (512) 463-9701

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Part III. Teachers' Professional Practices Commission

Chapter 177. Standards, Ethics, and Practices

19 TAC §177.1

The Texas Education Agency (TEA) adopts the repeal of §177.1, concerning teacher standards, ethics, and practices, on behalf of the Teachers' Professional Practices Commission, which was abolished in accordance with House Bill 2585, 73rd Texas Legislature, 1993. The repeal is adopted without changes to the proposed text as published in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11628) and will not be republished. The rule will be replaced with new 19 TAC Chapter 247, relating to educators' code of ethics, which was

proposed by the State Board for Educator Certification (SBEC) and adopted by the State Board of Education, in accordance with Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(i). The TEA will ensure that current rules remain in place until new rules are adopted. Adopted new 19 TAC Chapter 247 is filed in a separate submission.

No public comments were received regarding adoption of the new rule.

The repeal is adopted under Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(i), which authorizes the State Board for Educator Certification to adopt rules on standards, ethics and practices.

This agency 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 January 26, 1998.

TRD-9801134

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Teachers' Professional Practices Commission

Effective date: March 1, 1998

Proposal publication date: November 28, 1997

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

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Part VII. State Board for Educator Certification

Chapter 229. Accountability System for Educator Preparation

19 TAC §§229.1-229.5

The State Board of Education (SBOE) adopts new §§229.1-229.5, concerning accountability system for educator preparation. The new sections are adopted without changes to the proposed text as published in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11628) and will not be republished. Texas Education Code, §21.045(e), states that not later than September 1, 1998, an educator preparation program must meet the accreditation standards proposed by the board (State Board for Educator Certification) and adopted by the SBOE. The new sections will appear under the State Board for Educator Certification (SBEC) portion of the Texas Administrative Code. The new sections outline the implementation of the accountability system and the standards for accrediting educator preparation entities.

Adopted new 19 TAC Chapter 229, Accountability System for Educator Preparation, will hold educator preparation programs responsible for the performance of their students to assure the state of a diverse and well- qualified educator workforce. The new sections address the accreditation and, when required, oversight of educator preparation programs. Reports will be sent to each educator preparation program annually. Entities with a rating of "Accredited - Under Review" will submit action plans to the SBEC. The new sections replace current 19 TAC §§230.1-230.4. The adopted repeal of §§230.1-230.4 is filed in a separate submission.

The following public comment was received since the rules were published as proposed.

Comment. The Texas Business and Education Coalition commented in support of the proposed new rules, in particular, the strong accountability standards.

The new sections are adopted under Texas Education Code (TEC), §21.045(e), which states that not later than September 1, 1998, an educator preparation program must meet the accreditation standards proposed by the board and adopted by the SBOE. In addition, TEC, §21.045, requires the SBEC to propose rules establishing standards to govern the continuing accountability of all educator preparation programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 1998.

TRD-9801124

Dr. Criss Cloudt and Dr. Mark Littleton

Associate Commissioner, Policy Planning and Research and Executive Director

State Board for Educator Certification

Effective date: March 1, 1998

Proposal publication date: November 28, 1997

For further information, please call: (512) 469-3012

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Chapter 230. Professional Educator Preparation and Certifications

Subchapter A. Assessment of Educators

19 TAC §§230.1-230.4

The State Board for Educator Certification adopts the repeal of §§230.1-230.4, concerning educator preparation accountability system, without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10596) and will not be republished.

The repeals are necessary because new rules on the accountability system for educator preparation will be adopted in new 19 TAC Chapter 229, by the Texas Education Agency (State Board of Education) with a March 1, 1998, effective date.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Education Code (TEC), Chapter 21, Subchapter B, §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 1998.

TRD-9801044

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Effective date: March 1, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 469-3012

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Subchapter Q. Permits

19 TAC §230.512

The State Board for Educator Certification adopts new §230.512, concerning emergency certificates, without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10598) and will not be republished.

This rule reflects an interim change to existing rules on emergency permits until a new certification system can be developed. The new rule aligns current 19 TAC, Chapter 230, Subchapter Q (regarding permits) with language contained in Texas Education Code (TEC) Chapter 21, Subchapter B, §21.041(b)(2). The emergency certificate allows the district to fill vacancies with a qualified individual when certified individuals are not available.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Education Code (TEC), Chapter 21, Subchapter B, §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be issued including emergency certificates.

This agency 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 January 23, 1998.

TRD-9801045

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Effective date: March 1, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 469-3012

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Chapter 244. Certificate of Completion of Training for Appraisers

19 TAC §§244.1-244.4

The State Board for Educator Certification proposes new §§244.1-244.4, concerning certificate of completion of training for appraisers, without changes to the proposed text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10598) and will not be republished.

The new rules are necessary so that educators will be assured that appraisers have been trained to understand and implement an appraisal process.

No comments were received regarding adoption of the new rules.

The new sections are adopted under the Texas Education Code (TEC), Chapter 21, Subchapter B, §21.041(b)(10), which requires the State Board for Educator Certification to propose rules providing for the certification of persons performing appraisals under TEC Chapter 21, Subchapter H.

This agency 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 January 23, 1998.

TRD-9801046

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Effective date: March 1, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 469-3012

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Chapter 247. Educators' Code of Ethics

19 TAC §247.1, §247.2

The State Board of Education (SBOE) adopts new §247.1 and §247.2, concerning educators' code of ethics. Section 247.1 is adopted with changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 11922). Section 247.2 is adopted without changes and will not be republished. Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(i), require that the code of ethics be proposed by the SBEC and adopted by the SBOE, under TEC, §21.041, as added by this Act. The new sections will appear under the State Board for Educator Certification (SBEC) portion of the Texas Administrative Code. The new sections describe principles of professional ethical conduct; professional practices and performance; and ethical conduct toward professional colleagues, students, parents, and community.

The adopted educators' code of ethics will promote high standards of ethical conduct for the education profession. The new sections clearly state principles of conduct for each major area of an educator's responsibilities and supplement each principle with exemplary standards to guide the educator in applying them. The new sections will provide grounds for sanctioning the certificate of any educator found to be engaged in unprofessional practices in violation of the code of ethics. The adopted new sections are based on the current rules that were approved by a referendum vote of the profession. Additionally, the SBEC received input from educators through surveys collected in the 1996-1997 school year. As a result, the adopted new sections encourage compliance and enhance enforceability because educators believe they should follow and be held accountable for these standards of conduct.

The SBEC proposed and the SBOE adopted only one substantive revision to the former educators' code of ethics specified in 19 TAC §177.1, primarily to comply with laws protecting persons with disabilities. As previously worded, Principle II, Standard 2, required the educator to "possess mental health, physical stamina, and social prudence necessary to perform the duties of his professional assignment." Federal and state law, however, require employing school districts to make requested reasonable accommodations for educators with mental or physical disabilities who are otherwise qualified to perform the essential functions of their assignments. As revised, the adopted provision makes it a violation of the ethics code for educators to

deliberately impair their mental or physical health by abusing drugs or alcohol, for instance.

The SBEC will comply with its procedures, procedures adopted by the State Office of Administrative Hearings (SOAH), and procedures set forth in the Administrative Procedure Act. Such procedures specify notification to SOAH and parties regarding disciplinary proceedings.

The adopted new sections replace current 19 TAC Chapter 177, Standards, Ethics, and Practices. The adopted repeal of 19 TAC Chapter 177 is filed in a separate submission. The new sections contain language similar to Chapter 177.

The following change has been made to the rule since it was published as proposed.

In §247.1, the phrase "pursuant to Chapter 249 of this title (relating to Disciplinary Hearings and Sanctions)" has been deleted. The SBEC is still in the process of reviewing rules for disciplinary hearings and sanctions.

No public comments have been received since the sections were published as proposed.

The new sections are adopted under Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(i), which requires that the code of ethics be proposed by the SBEC and adopted by the SBOE, under TEC, §21.041, as added by this Act. Texas Education Code (TEC), §21.041(b)(8), requires the SBEC to propose rules that provide for the adoption, amendment, and enforcement of an educator's code of ethics.

§247.1. Purpose and Scope.

In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (the board) adopts an educators' code of ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The board may amend the ethics code in the same manner as any other formal rule. The board is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

Filed with the Office of the Secretary of State on January 26, 1998.

TRD-9801123

Dr. Criss Cloudt and Dr. Mark Littleton

Associate Commissioner, Policy Planning and Research and Executive Director

State Board for Educator Certification

Effective date: March 1, 1998

Proposal publication date: November 28, 1997

For further information, please call: (512) 469-3012

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Prohibitions

22 TAC §109.103

The State Board of Dental Examiners adopts amendments to §109.103 concerning professional responsibility with changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 11924). The change is to correct an error in the published proposal. The word "without" following the first comma is changed to the term "only after".

The amended rule provides that dentists may prescribe medications to patients of other dentists who have entered into an after hours call agreement with the prescribing dentist without violating other board rules that address prescriptions made by dentists.

The amended rule is intended to make it clear that dentists may prescribe medications in the described circumstances without violating rules which provide that a dentist may not prescribe medications for a person who is not the dentist's dental patient.

No comments were received regarding adoption of the amended rule.

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

§109.103. Professional Responsibility.

In order to safeguard the dental health and welfare of the public and the dentist-patient relationship and fix professional responsibility for dental services, no dentist or any other licensee or certificate holder of the Board shall:

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

(7) provide prescriptions for any medications to patients of other dentists, who are part of an after hours call agreement with the license holder, only after taking steps to determine that the individual is in fact a patient of the other dentist. Such steps shall include but are not limited to determination of patient's basic medical history, including name, when last seen by patient's doctor, service performed and prescriptions written, if any.

This agency 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 January 22, 1998.

TRD-9800926

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Effective date: February 10, 1998

Proposal publication date: December 5, 1997

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

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Advertising

22 TAC §109.204

The State Board of Dental Examiners adopts amendments to §109.204, concerning definition of false and misleading advertising with changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 11925). The change, detailed in subsection (11) was made in response to public comment.

The amended rule provides that failure of a practitioner to list his/her dental degrees or to disclose that services are to be provided by a dentist in advertising is false and misleading.

The amended rule is intended to prevent dentists from advertising services available such as certain cosmetic procedures, without disclosing that services will be provided by dentists.

One comment was received regarding adoption of the amended rule. The commenter observed that the language of the proposed rule would be impossible for group dental practices to meet in that any one of a number of dentists could provide advertised services, and that knowing which degree to list, there are different dental degrees, would be impossible. The point is well taken. As proposed the rule requires that degrees of providing dentists be listed and it allows the copy to include statements that services are to be provided by a general dentist or by a specialist, if the providing dentist is a specialist. If the second provision is allowed as an alternative to listing degrees, large group practices can advertise the availability of services and include a statement that services will be provided by a general dentist. The second sentence in subsection (11) was amended to "as an alternative to listing degrees,..." rather than "in addition to listing degrees,...".

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

§109.204. Definition of False and Misleading Advertising.

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect. A communication is false or misleading if it:

(1)-(10) (No change.)

(11) Fails to include in advertising copy either the earned degree or degrees of the dentist who will provide dental services. As an alternative to listing degrees, the copy may indicate that services are to be provided by a general dentist, or a specialist, which must be listed, in any specialty recognized by the American Dental Association, if the providing dentist is a specialist as listed.

This agency 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 January 22, 1998.

TRD-9800925
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Effective date: February 10, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 463–6400

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Part XIV. Texas Optometry Board

Chapter 275. Continuing Education

22 TAC §275.1

The Texas Optometry Board adopts amended Rule 275.1 without change to the proposed text published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10612).

Rule 275.1 is required in order to inform the licensees and providers of continuing education that an itinerary of time in the class must be provided to the Board for course approval whereby credit can be extended to licensees who maintain a license to practice optometry. Texas Optometry Act, Texas Civil Statutes, Article 4552 § 4.01B requires each licensee to obtain continuing education for the renewal of a license.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, § 4.01B and § 2.14. The Texas Optometry Board interprets § 4.01B as authorizing it to interpret the continuing education requirements. The Board interprets § 2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 1998.

TRD-9800996
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: February 11, 1998
Proposal publication date: October 31, 1997
For further information, please call: (512) 305–8500

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Part XXII. Texas State Board of Public Accountancy

Chapter 505. The Board

22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, without changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 11925).

The amendment allows the board to continue all of its standing committees until January 1, 2002, when the committees will be automatically abolished unless the board continues the committees.

The amendment will function by continuing all of the standing committees until January 1, 2002. On or before that date the board must decide which, if any, committees to continue or allow them to be automatically abolished.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law, §2110.008, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 1998.

TRD-9801107
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 12, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 305–7800

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Chapter 515. Licenses

22 TAC §515.11

The Texas State Board of Public Accountancy adopts new §515.11, without changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 11926).

The new rule allows an exemption from the professional fee for federal employees who are prohibited by virtue of their federal employment from engaging in a part-time practice.

The new rule will function by requiring eligible federal employees to execute an Affidavit in order to be eligible for the exemption. If a licensee loses eligibility during a license year, the licensee is responsible for the professional fee.

No comments were received concerning adoption of the new section.

The section is adopted under Texas Civil Statutes, Article 41a–1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law, and §9A which conferred this exemption.

This agency 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 January 23, 1998.

TRD-9801106
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 12, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 305–7800

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22 TAC §515.12

The Texas State Board of Public Accountancy adopts new §515.12, without changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register*, (22 TexReg 11926).

The new rule allows an exemption from the professional fee for state employees whose state agency employer has authorized payment of the professional fee and who do not engage in the client practice of accounting.

The new rule will function by requiring eligible state employees to execute an Affidavit in order to be eligible for the exemption. If a licensee loses eligibility during a license year, the licensee is responsible for the professional fee.

No comments were received concerning adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law, and §9A which conferred this exemption.

This agency 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 January 23, 1998.

TRD-9801109
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 12, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 305–7800

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Chapter 523. Continuing Professional Education Standards

22 TAC §523.23

The Texas State Board of Public Accountancy adopts an amendment §523.32, without changes to the proposed text as published in the December 5, 1998, issue of the *Texas Register*, (22 TexReg 11927).

The amendment allows for a clearer understanding of the type of ethics courses required of Texas resident CPAs, and informs non-Texas resident CPAs how they may satisfy their ethics course requirement.

The amendment will function by requiring Texas resident CPAs to take their ethics course through a live instructor or through an interactive format, and states how non-Texas resident CPAs may satisfy their ethics course requirement.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to effectuate the purposes of the law, and §15A which allows the board to promulgate rules on continuing professional education.

This agency 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 January 23, 1998.

TRD-9801110
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 12, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 305–7800

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Medication Program

Medication Pilot Project

25 TAC §§98.131-98.141

The Texas Department of Health (department) by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting new §§98.131-98.141, concerning the Human Immunodeficiency Virus (HIV) Medication Program. Specifically, these sections describe a medication pilot project; the purpose and scope of the project; criteria for financial eligibility and specific benefits; medications covered; priority; application and appeal procedures; confidentiality; the types of payment for approved medication; participating pharmacies; and prescription fees. The new rules are adopted without changes to the proposed text as published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10879) and therefore will not be republished.

Rider 54 to the Texas Department of Health portion of the General Appropriation Act of the 75th Legislature encouraged the department to develop this pilot project to expend donated funds for HIV medications and coinsurance payments for HIV positive persons. The Texas Health and Safety Code, Chapter 85, Subchapter C, ("HIV Medication Program") requires the department to assist health care providers and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. The new rules will implement the goals established by these laws, in a fair and efficient manner and will encourage and support the increased participation of persons infected with HIV in the workforce.

No comments were received on the proposed rules.

The new sections are proposed under Texas Health and Safety Code §85.062 which requires the board to establish by rule, financial eligibility requirements for participation in the HIV medication program; §85.063 which requires the board to establish application and distribution procedures, eligibility guidelines, and appeals procedures for the HIV medication program; §85.016 which allows the board to adopt any rules necessary to implement the HIV Medication Program; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

Filed with the Office of the Secretary of State on January 21, 1998.

TRD-9800973
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 10, 1998
Proposal publication date: November 7, 1997
For further information, please call: (512) 458-7236

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Chapter 128. Permits for Contact Lens Dispensers

25 TAC §§128.1-128.9

The Texas Department of Health (department), by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting new §§128.1 - 128.9, concerning the regulation of persons and business entities that sell, deliver, or dispense contact lenses in Texas. Sections 128.3, 128.4, and 128.6 are adopted with changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9602). Sections 128.1, 128.2, 128.5, 128.7, 128.8, and 128.9 are adopted without changes, and therefore the sections will not be republished.

The new sections implement the applicable provisions of the Texas Contact Lens Prescription Act, (Act), Texas Civil Statutes, Article 4552-A (House Bill 196, 75th Legislature, 1997), which establishes that before an optician may dispense contact lenses to a person in this state, the optician must obtain a contact lens dispensing permit from the department by January 1, 1998, and sets an annual permit fee. The sections provide for the regulation and permitting of contact lens dispensers. The sections cover definitions; permit application procedures and requirements; renewal of permits; name and address changes; violations, complaints, and disciplinary actions; petition for rulemaking; display of permit; and electronic storage of contact lens prescriptions.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §128.2 (Definitions), one commenter suggested that the definition of "optician" should include language that is inclusive of mail order companies that dispense contact lenses.

Response: The department disagrees. The definition is statutory language. Based on a review of Sections 4(a) and 5(c) of the Act, the department agrees with the commenter that mail order companies who dispense contact lenses to persons in Texas are required to obtain a contact lens dispensing permit.

Comment: One commenter stated that the proposed rules accomplish what the Act envisioned. Concerning §128.3 (Application Requirements and Procedures), the commenter noted that the proposed section did not reflect the requirement in the Act that the board may not issue a permit to an applicant who has had a contact lens dispensing permit revoked or cancelled for cause within the 24-month period preceding the application date.

Response: The department agrees and has added the suggested language in §128.3(g).

Comment: Concerning §128.3(e)(1), one commenter stated that the board exceeds its statutory authority if it mandates an

applicant to disclose his or her date of birth and social security number.

Response: The department disagrees. The disclosure of a social security number is required under the Family Code, §231.302. Social security numbers are used for identification purposes and are confidential except as to the Child Support Enforcement Division of the Office of the Attorney General. The date of birth is required should the department need to stagger permit renewals at some later date and to ensure accurate identification should applicants and permit holders report past criminal convictions.

Comment: Concerning §128.3(e)(3), one commenter stated that there is no basis in the Act to support mandatory disclosure of the names and addresses of all officers, directors, and major shareholders of a corporation in a permit application.

Response: The department disagrees. Section 5(b)(2) of the Act mandates that the board shall not issue a permit to an applicant who has had a contact lens dispensing permit revoked or cancelled for cause within the 24-month period preceding the application date. The information is required in order to identify permit applicants who have previous disciplinary action by the department.

Comment: Concerning §128.3(e)(3) and (e)(4), one commenter stated that the paragraphs are ambiguous since (e)(3) does not reference a corporation, which is a business entity.

Response: The department agrees and has added language to §128.3(e)(3) that clarifies that the rule applies to corporations and other business entities.

Comment: Concerning §128.4(c)(1), one commenter suggested that a notice for permit renewal be mailed to a permit holder at least 60 days (instead of 30 days) prior to the expiration date.

Response: The department agrees and has changed the wording of §128.4(c)(1) to read "60" days instead of "30" days.

Comment: Concerning §128.4(c)(2), one commenter suggested that the words "disclosure of" should be added prior to the last phrase of the rule in order to clarify that a permit holder is required to disclose felony and misdemeanor convictions at the time of renewal.

Response: The department agrees and has added the suggested language to §128.4(c)(2).

Comment: Concerning §128.6 (Violations, Complaints, and Disciplinary Actions), department staff noted that the section does not address whether criminal convictions of an applicant or a permit holder may be the basis for the denial of a permit application or a permit renewal application or the revocation, suspension, or probation of an existing permit.

Response: The department agrees and has added §128.6(f) relating to eligibility of persons with criminal backgrounds for a contact lens dispensing permit.

Comment: Concerning §128.6 (Violations, Complaints, and Disciplinary Actions), department staff recommended editorial changes.

Response: The department agrees. The phrase "these rules" has been changed to "this chapter" in §§128.6(a), 128.6(b)(1), and 128.6(d)(2). The phrase "or this chapter" has been added to §128.6(d)(1). These changes clarify the intent and improve the accuracy of the section. "Thirty" has been changed to "30" in §128.6(d)(3) to reflect *Texas Register* format.

Comment: Concerning §128.8 (Display of Permit), one commenter suggested that either a consumer complaint sign be required for display by a permit holder or that the name, address, and telephone number of the department be prominently visible on the permit.

Response: The department confirms that the name, address, and telephone number of the department will be prominently visible on the permit and no change to §128.8 was made.

Comment: One commenter requested that a standard stamp or imprint be required for use when an optician partially fills a prescription for disposable contact lenses, so that the modification of the prescription may be recognized as a permanent and valid modification.

Response: This matter is not addressed in the proposed rules. However, §4(g) of the Act sets out a specific procedure that details to opticians, optometrists, pharmacists, and physicians exactly what information must be noted on a partially filled prescription. When a notation is made on a prescription in accordance with that section, the notation is a permanent and valid modification of the prescription.

The comments on the proposed rules received by the department during the comment period were submitted by Texas Optometric Association, Texas Optometry Board, LensCrafters, Inc., and by department staff. The commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The new sections are adopted under Texas Civil Statutes, Article 4552-A, which provides the Board of Health (board) with the authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§128.3. Application Requirements and Procedures.

(a) Contact lenses may only be dispensed by the following persons: a physician, optometrist, or therapeutic optometrist; a pharmacist; or an optician, a corporation, or other business entity that holds a valid contact lens dispensing permit issued under the Act.

(b) An employee of a corporation or business entity with a permit issued under the Act is not required to obtain a separate permit.

(c) A corporation or other business entity that dispenses contact lenses to a person in this state must obtain a contact lens dispensing permit. A corporation or other business entity that has nine or fewer locations is required to obtain a permit for each location. A corporation or other business entity with ten or more locations may obtain a single permit for the entity and its employees.

(d) An applicant for a permit must submit all required information on official application forms prescribed by the department and submit the required permit fee.

(e) The application form shall contain the following information:

(1) specific information regarding personal data, full legal name, date of birth, social security number, information

regarding other licenses, registrations, permits, and certifications held by applicant, and information regarding misdemeanor and felony convictions of applicant;

(2) trade names and addresses of all locations in which the optician intends to conduct business;

(3) if applicant is a corporation or other business entity, specific information regarding type of ownership, registered address, and names and addresses of all officers, directors, registered agents and major shareholders;

(4) if applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171 (relating to Franchise Tax); is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171 (relating to Franchise Tax);

(5) a statement that the applicant has read the Act and these rules;

(6) a statement that the applicant, if issued a permit, shall return the permit to the board upon revocation or suspension of the permit or other disciplinary action against the permit holder;

(7) a statement that the applicant understands that fees and materials submitted in the permitting process are nonrefundable and nonreturnable;

(8) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the sale, delivery, or dispensing of contact lenses;

(9) a statement that the information contained in the application is truthful and complete; and

(10) the signature of the applicant which has been dated and notarized.

(f) Application processing. The department shall comply with the following procedures in processing applications for permits and applications for permit renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The contact lens dispensing permit may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a permit - 30 working days;

(B) issuance of permit renewal after receipt of documentation of all renewal requirements - 20 working days; and

(C) letter of denial of permit - 30 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for permits and permit renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The program administrator shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of permits or permit renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

(g) The board shall not issue a permit to an applicant who has had a contact lens dispensing permit revoked or cancelled for cause within the 24-month period preceding the application date, or has otherwise failed to comply with the Act or this chapter.

§128.4. Renewal of Permit.

(a) Purpose. The purpose of this section is to set out the rules governing permit renewal.

(b) General.

(1) When issued, a permit is valid for one year commencing on the date of issuance of the initial permit.

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit shall be the last day of the month in which the permit was originally issued.

(4) Each permit holder is responsible for renewing the permit before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(5) The department shall not renew a permit if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(6) The department shall not renew a permit if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support), as set out in §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

(c) Permit renewal procedures.

(1) At least 60 days prior to the expiration date of a permit, the department shall send notice to the permit holder's address in the department's records a permit renewal form. The renewal form shall give notice of the expiration date of the permit and the amount of the renewal fee required. The permit holder must complete and return the renewal form and fee to the department.

(2) The permit renewal form shall require the applicant to provide the preferred mailing address, primary employment address and telephone number, trade names and addresses of all locations in which the optician intends to conduct business, and the disclosure of misdemeanor or felony convictions.

(3) A permit holder has renewed the permit when the permit holder has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the permit. The postmark date shall be considered the date of mailing.

(4) The department shall issue a renewed permit to a permit holder who has met all requirements for renewal.

(5) A permit holder whose check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the permit holder's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewed permit has already been issued, it shall be ineffective.

(6) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the state of Texas, the permit holder may renew the permit pursuant to this subsection.

(A) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after expiration of the permit. Permit holders who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(C) A copy of the official orders or other official military documentation showing that the permit holder is or was on active duty serving outside the state of Texas shall be filed with the department along with the renewal form.

(D) A copy of the power of attorney from the permit holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(d) Expiration of permit. A permit holder whose permit has expired may not fill a contact lens prescription in this state or sell, deliver, or dispense contact lenses to any person in this state.

§128.6. Violations, Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out procedures concerning complaints alleging violations of the Act or this chapter and to set out the department actions against a permit holder when violations have occurred.

(b) Filing of complaints.

(1) Any person may complain to the department alleging that a person has violated the Act or this chapter.

(2) A person wishing to file a complaint against a permit holder or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. The mailing address is Contact Lens Dispensing Permit Program, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone: (512) 834-4515.

(3) Upon receipt of a complaint, the administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints shall be investigated by the department provided that the complainant provides sufficient information.

(c) Investigation of complaints.

(1) The administrator is responsible for handling complaints.

(2) The department shall make the initial investigation and report the findings to the administrator.

(3) If the administrator determines that the complaint does not come within the department's jurisdiction, the administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The administrator, on behalf of the board, shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition.

(5) The administrator may recommend that the permit be revoked, suspended, or denied or that the permit be placed on probation or that other appropriate action as authorized by law be taken.

(6) If the administrator determines that there are insufficient grounds to support the complaint, the administrator shall dismiss the complaint and give written notice of the dismissal to the permit holder or person against whom the complaint has been filed and the complainant.

(d) Department actions.

(1) The board may deny a permit application or permit renewal application or suspend or revoke the permit, or place the permit on probation for a violation of the Act or this chapter. The board may also impose an administrative penalty of not more than $1000 for a violation of the Act. Administrative penalties shall be assessed in accordance with the procedures set forth in the Opticians' Registry Act, Texas Civil Statutes, Article 4551-1, §10A.

(2) Prior to institution of formal proceedings to revoke, suspend, or place on probation or impose an administrative penalty, the department shall give written notice to the permit holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the permit holder shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) If disciplinary action of a permit holder is proposed, the department shall give written notice by certified mail, return receipt requested, that the permit holder must request, in writing,

a formal hearing within 30 of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(e) Formal hearings.

(1) A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and Chapter 1 of this title (relating to Texas Board of Health).

(2) Copies of the formal hearing procedures are indexed and filed in the administrator's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

(f) Guidelines concerning criminal convictions.

(1) The purpose of this section is to comply with the requirements of Texas Civil Statutes, Article 6252-13d (relating to Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law.)

(2) The department may deny a permit application or a permit renewal application, or revoke, suspend, or place on probation an existing permit if an applicant or permit holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines:

(A) a person holding a contact lens dispensing permit may only dispense contact lenses pursuant to an original, unexpired contact lens prescription and must do so accurately and without modification. Those criminal convictions which evidence an unwillingness or inability to follow these requirements may be asserted as a basis to deny a permit or institute disciplinary action against an existing permit; and

(B) the factors and evidence listed in Article 6252-13c, §4 (relating to Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses) shall be considered in determining eligibility for a permit.

Filed with the Office of the Secretary of State on January 21, 1998.

TRD-9800976
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 10, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 458-7236

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Chapter 289. Radiation Control

Texas Regulations for Control of Radiation

25 TAC §289.123

The Texas Department of Health (department), by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting the repeal of §289.123 and new §289.260, concerning licensing of uranium recovery and byproduct material disposal facilities, with changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9607). The repeal of §289.123 is adopted without changes and therefore will not be republished.

The section adopted for repeal adopts by reference Part 43, titled "Licensing of Uranium Recovery Facilities" of the *Texas Regulations for Control of Radiation* (TRCR). The new section incorporates language from Part 43 that has been rewritten in *Texas Register* format and includes addition and revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the *Texas Register* format. The new section reflects the renumbering.

The new section incorporates requirements for expeditious reclamation of uranium mill tailings impoundments, including reclamation schedules and milestones. Requirements for decommissioning of licensed facilities are expanded and requirements for timeliness of decommissioning are added. In addition, the new section clarifies the need for the licensee to submit an updated closure plan at the time of decommissioning. These requirements are items of compatibility with the United States Nuclear Regulatory Commission and as an agreement state, Texas must adopt them. References to other sections of this chapter are clarified to reflect the *Texas Register* format. Other subsections of the section are changed to clarify and more adequately specify the requirements for uranium recovery and byproduct material disposal facilities. The revisions are a result of Senate Bill 1857, 75th Legislature, which transferred the jurisdiction for the regulation of uranium recovery and byproduct material disposal facilities from the Texas Natural Resource Conservation Commission (TNRCC) to the department. TNRCC adopted the items of compatibility on May 27, 1997, prior to the transfer of jurisdiction.

No public comments were received during the comment period for the repeal of §289.123, and new §289.260. However, the department is making minor editorial changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §289.260(h)(10), the form was changed from "TRC Form 12-2L" to "BRC Form 252-1" to state the correct applicable form.

Change: Concerning §289.260(j)(6)(A), the date for submission for financial security was changed from "six months from the effective date of the rule" to "September 1, 1998" to state the actual effective date for this requirement.

Change: Concerning §289.260(s), Figure 1: 25 TAC §289.260(s), the department realized several values in the table were listed in the wrong maximum concentration column, and moved the values to the correct column.

The repeal is adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 1998.

TRD-9800964
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 10, 1998

Proposal publication date: September 26, 1997
For further information, please call: (512) 458–7236

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License Regulations

25 TAC §289.260

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.260. Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.

(a) Purpose. This section provides for the specific licensing of the receipt, possession, use, or disposal of radioactive material in uranium recovery facilities and other operations which accept for disposal byproduct material. No person shall engage in such activities except as authorized in a specific license issued pursuant to this section unless otherwise provided for in §289.252 of this title (relating to Licensing of Radioactive Material).

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title, and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Aquifer - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

(A) hydraulically interconnected to a natural aquifer;

(B) capable of discharge to surface water; or

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with subsection (r) of this section.

(2) As expeditiously as practicable considering technological feasibility - As quickly as possible considering the physical characteristics of the byproduct material and the site, the limits of "available technology" (as defined in this subsection), the need for consistency with mandatory requirements of other regulatory programs, and "factors beyond the control of the licensee" (as defined in this subsection). The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(3) Available technology - Technologies and methods for emplacing a final radon barrier on byproduct material piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (e.g., by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) Byproduct material - Tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "byproduct material" within this definition.

(5) Capable fault - As used in this section, "capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(6) Closure - The post-operational activities to decontaminate and decommission the buildings and site used to produce byproduct materials and reclaim the tailings and/or disposal area, including groundwater restoration, if needed.

(7) Closure plan - The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(8) Commencement of construction - Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.

(9) Compliance period - The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(10) Dike - An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(11) Disposal area - The area containing byproduct materials to which the requirements of subsection (q)(16)-(q)(27) of this section apply.

(12) Existing portion - As used in subsection (q)(9)(A) of this section, "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of byproduct materials had been placed prior to September 30, 1983.

(13) Factors beyond the control of the licensee - Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with subsection (q)(24) of this section. These factors may include but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(14) Final radon barrier - The earthen cover (or approved alternative cover) over byproduct material constructed to comply with subsection (q)(16)-(q)(27) of this section (excluding erosion protection features).

(15) Fund - The Radiation and Perpetual Care Fund.

(16) Groundwater - Water below the land surface in a zone of saturation. For purposes of this section, groundwater is the water contained within an aquifer as defined in paragraph (1) of this subsection.

(17) Hazardous constituent - Subject to subsection (q)(10)(E) of this section, "hazardous constituent" is a constituent which meets all three of the following tests:

(A) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(B) The constituent has been detected in the groundwater in the uppermost aquifer; and

(C) The constituent is listed in 10 CFR Part 40, Appendix A, Criterion 13.

(18) Leachate - Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the byproduct material.

(19) Licensed site - The area contained within the boundary of a location under the control of persons generating or storing byproduct materials under a license.

(20) Liner - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment which restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

(21) Maximum credible earthquake - That earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(22) Milestone - An action or event that is required to occur by an enforceable date.

(23) Operation - The period of time during which a byproduct material disposal area is being used for the continued placement of byproduct material or is in standby status for such placement. A disposal area is in operation from the day that byproduct material is first placed in it until the day final closure begins.

(24) Point of compliance - The site-specific location in the uppermost aquifer where the groundwater protection standard must be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(25) Principal activities - Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(26) Reclamation plan - For the purposes of subsection (q)(16)-(q)(27) of this section, "reclamation plan" is the plan detailing activities to accomplish reclamation of the byproduct material disposal area in accordance with the technical criteria of this section. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of byproduct material must also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(27) Security (surety) - The following are examples of "security":

(A) cash deposits;

(B) surety bonds;

(C) certificates of deposit;

(D) deposits of government securities;

(E) irrevocable letters of credit; or

(F) other security acceptable to the agency.

(28) Surface impoundment - A natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

(29) Unrefined and unprocessed ore - Ore in its natural form before any processing, such as grinding, roasting, beneficiating, solution extracting, or refining.

(30) Uppermost aquifer - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(31) Uranium recovery - Any uranium extraction or concentration activity that results in the production of "byproduct material" as it is defined in this subsection. As used in this definition,

"uranium recovery" has the same meaning as "uranium milling" in 10 CFR 40.4.

(d) Filing application for specific licenses.

(1) Applications for specific licenses shall be filed in eight copies on a form prescribed by the agency. Applications for issuance of licenses shall include an environmental report that includes the results of a one-year preoperational monitoring program. Applications for renewal of licenses shall include an environmental report that includes the results of the operational monitoring program.

(2) The agency may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the agency to determine whether the application should be denied or whether a license should be granted, modified, or revoked.

(3) Each application shall be signed by the applicant or licensee or a person legally authorized to act for and on the applicant's or licensee's behalf.

(4) An application for a license may include a request for one or more activities.

(5) In any application, the applicant may incorporate by reference, information contained in previous applications, statements, or reports filed with the agency, provided that the reference is clear and specific.

(6) Applications and documents submitted to the agency will be made available for public inspection except that the agency may withhold any document or part thereof from public inspection if the applicant or licensee states in writing that disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned. Exceptions to agency decisions regarding disclosure are subject to the Texas Public Information Act, Government Code, Chapter 552.

(7) An application for a license shall contain written specifications relating to the uranium recovery facility operations, and the disposition of the byproduct material.

(8) Each application must clearly demonstrate how the requirements of subsections (d)-(h), and (o)-(r) of this section have been addressed. Failure to clearly demonstrate how these requirements have been addressed shall be grounds for refusing to accept an application for filing.

(9) Each application for a specific license, other than a license exempted from §289.204 of this title, shall be accompanied by the fee prescribed in §289.204 of this title.

(10) Each application shall be accompanied by BRC Form 252-1.

(11) Applications for new licenses shall be processed in accordance with the following time periods.

(A) The first period is a time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.

(B) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapters 2001 and 2002.

(12) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (11) of this subsection, the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the Director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §1.21-1.34 of this title (relating to the Texas Board of Health).

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these requirements in such a manner as to protect public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to protect public health and safety and the environment;

(3) the issuance of the license will not be inimical to public health and safety nor have a long-term detrimental impact on the environment;

(4) the applicant has demonstrated financial capability to conduct the proposed activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance; and

(5) the applicant satisfies all applicable special requirements in this section.

(f) Special requirements for specific license application for uranium recovery and byproduct material disposal facilities. In addition to the requirements set forth in subsection (e) of this section, a specific license will be issued if the applicant submits to the agency a satisfactory application as described herein and meets the following other conditions specified.

(1) An application for a license shall include an environmental report that addresses the following:

(A) description of the proposed project or action;

(B) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(C) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(D) environmental effects of accidents;

(E) byproduct material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(F) site and project alternatives.

(2) The applicant shall provide a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the byproduct material disposal areas in accordance with the technical requirements of subsection (q) of this section.

(3) Unless otherwise exempted, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license.

(4) Prior to issuance of the license, the applicant shall propose, for approval by the agency, an acceptable form and amount of financial security consistent with the requirements of subsection (o) of this section.

(5) The applicant shall provide procedures describing the means employed to meet the requirements of subsections (h)(6), (h)(7), and (q)(15) of this section during the operational phase of any project.

(6) An application for a license shall contain specifications for the emissions control and disposition of the byproduct material.

(7) An application for disposal of byproduct material from others shall include information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(g) Issuance of specific licenses.

(1) Upon a determination that an application meets the requirements of the Texas Radiation Control Act (Act) and the requirements of the agency, the agency may issue a specific license authorizing the activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance or amendment, or thereafter by appropriate requirement or order, such additional requirements and conditions as it deems appropriate or necessary in order to:

(A) protect public health and safety or the environment;

(B) require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be appropriate or necessary; and

(C) prevent loss or theft of material subject to this section.

(h) Specific terms and conditions of license.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to all applicable rules and orders of the agency.

(2) No license issued in accordance with this section and no right to possess or utilize radioactive material authorized by any license issued in accordance with this part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, now and hereafter in effect, and to applicable requirements and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the licensed material to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code (11 U.S.C.) by or against:

(A) a licensee;

(B) an entity (as that term is defined in 11 U.S.C. 101(14)) controlling a licensee or listing the license or licensee as property of the estate; or

(C) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(5) The notification required by paragraph (4) of this subsection must indicate:

(A) the bankruptcy court in which the petition for bankruptcy was filed;

(B) a copy of the bankruptcy petition; and

(C) the date of filing of the petition.

(6) Daily inspection of any byproduct material retention systems shall be conducted by the licensee. General qualifications for such individuals conducting such inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(7) In addition to the applicable requirements of §289.202(ww)-(yy) of this title and §289.252(r) of this title, the licensee shall immediately notify the agency of the following:

(A) any failure in a byproduct material retention system which results in a release of byproduct material into unrestricted areas;

(B) any release of radioactive material which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title and which extends beyond the licensed boundary;

(C) any spill which exceeds 20,000 gallons and which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title; or

(D) any release of solids which exceeds the contamination limits in §289.202)(ddd) of this title and that extends beyond the licensed boundary.

(8) In addition to the applicable requirements of §289.202(ww)-(yy) of this title and §289.252(r) of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill which exceeds 2,000 gallons and which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title.

(i) Expiration and termination of licenses and decommissioning of sites, separate buildings, or outdoor areas.

(1) Except as provided in paragraph (4) of this subsection and subsection (j)(2) of this section, each specific license shall expire at the end of the day, in the month and year stated in the license.

(2) Each licensee shall notify the agency immediately, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (6) and (17) of this subsection. The licensee is subject to the provisions of paragraphs (4)-(18) of this subsection, as applicable.

(3) No less than 90 days before the expiration date specified in a specific license, the licensee shall either:

(A) submit an application for license renewal under subsection (j) of this section; or

(B) notify the agency in writing, under paragraph (2) of this subsection, if the licensee decides to discontinue all activities involving radioactive material.

(4) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(A) limit actions involving source material to those related to decommissioning; and,

(B) continue to control entry to restricted areas until they are suitable for release in accordance with agency requirements.

(5) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in subsection (f)(2) of this section, so that the buildings or outdoor areas are suitable for release in accordance with agency requirements, if:

(A) the license has expired in accordance with paragraph (1) of this subsection; or

(B) the licensee has decided to permanently cease principal activities, as defined in subsection (c)(25) of this section, at the entire site or in any separate building or outdoor area; or

(C) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(6) Coincident with the notification required by paragraph (5) of this subsection, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with subsection (o) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (12)(F) of this subsection.

(A) Any licensee who has not provided financial security to cover the detailed cost estimate submitted with the closure plan shall do so on or before September 1, 1998.

(B) Following approval of the closure plan, a licensee may reduce the amount of the financial security, with the approval of the agency, as decommissioning proceeds and radiological contamination is reduced at the site.

(7) In addition to the provisions of paragraph (6) of this subsection, each licensee shall submit an updated closure plan to the agency within 12 months of the notification required by paragraph (5) of this subsection. The updated closure plan shall meet the requirements of subsections (f)(2) and (o) of this section. The updated closure plan shall describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(8) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with paragraph (5) of this subsection. The schedule for decommissioning set forth in paragraph (5) of this subsection may not commence until the agency has made a determination on the request.

(9) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases;

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(10) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (5) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(11) The procedures listed in paragraph (9) of this subsection may not be carried out prior to approval of the decommissioning plan.

(12) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(A) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(F) a justification for the delay based on the criteria in paragraph (16) of this subsection for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval.

(13) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(14) Except as provided in paragraph (16) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(15) Except as provided in paragraph (16) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(16) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor area, and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(C) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(17) As the final step in decommissioning, the licensee shall:

(A) certify the disposition of all licensed material, including accumulated byproduct material;

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate;

(i) report levels of gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces, and report levels of radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) removable and fixed for surfaces, μCi (MBq) per milliliter for water, and picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(18) Specific licenses, including expired licenses, will be terminated by license amendment when the agency determines that:

(A) source material and byproduct material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with agency requirements;

(D) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with agency requirements;

(E) records required by §289.251(l)(4)(C) of this title have been received;

(F) the licensee has paid any outstanding fees required by §289.204 of this title and has resolved any outstanding notice(s) of violation issued to the licensee;

(G) the licensee has met the applicable technical and other requirements for closure and reclamation of a byproduct material disposal site; and

(H) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(19) Specific licenses for uranium recovery are exempt from paragraphs (5)(C),

(7) , and (8) of this subsection with respect to reclamation of byproduct material impoundments and/or disposal areas. Timely reclamation plans for byproduct material disposal areas must be submitted and approved in accordance with subsection (q)(16)-(q)(27) of this section.

(20) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with this subsection.

(21) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed must be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in §289.202(ddd) of this title and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the

agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

(j) Renewal of license.

(1) Request for renewal of specific licenses shall be filed in accordance with subsection (d) of this section with the exception of subsection (d)(9) of this section.

(2) In any case in which a licensee, not less than 90 days prior to expiration of the existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the agency.

(k) Amendment of licenses at request of licensee. Requests for amendment of a license shall be filed in accordance with subsection (d) of this section, except that the requirements of subsection (d)(1), (d)(7), and (d)(8) of this section may be waived at the discretion of the agency. Such requests shall also specify how the licensee desires the license to be amended and the basis for such amendment.

(l) Agency action on applications to renew or amend. In considering a request by a licensee to renew or amend the license, the agency will apply the appropriate criteria set forth in subsections (e) and (f) of this section.

(m) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this section.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency after receiving prior approval from the agency;

(B) to the United States Department of Energy;

(C) to any person exempt from the licensing requirements of the Act and these requirements or exempt from the licensing requirements of the NRC or an agreement state, to the extent permitted by these exemptions;

(D) to any person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing documents, issued by the agency, any agreement state, or to any person otherwise authorized to receive such material by the federal government or any agency thereof, the agency, or any agreement state;

(E) to any person abroad pursuant to an export license issued under Title 10, Chapter 1, CFR Part 110; or

(F) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, or to a general licensee who is required to register with the agency, the NRC, or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification of paragraph (3) of this subsection are acceptable:

(A) the transferor may possess and have read a current copy of the transferee's specific license or registration certificate;

(B) the transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(C) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days; or

(D) when none of the methods of verification described in subparagraphs (A)-(C) of this paragraph are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, or the NRC, that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of §289.257 of this title.

(n) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, or by reason of rules or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part:

(A) for any material false statement in the application or any statement of fact required under provisions of the Act; or

(B) because of conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to issue a license on an original application; or

(C) for violation of, or failure to observe applicable terms and conditions of the Act, or of the license, or of any requirement or order of the agency.

(3) Except in cases of willful violation of the Act or these requirements or cases in which protection of the public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(4) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with subsection (i) of this section.

(5) Each specific license revoked by the agency expires at the end of the day on the date of the Agency's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by agency order.

(o) Financial security requirements.

(1) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee prior to the commencement of operations to assure that sufficient funds will

be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any byproduct material disposal areas. The amount of funds to be ensured by such security arrangements must be based on agency-approved cost estimates in an agency-approved closure plan for:

(A) decontamination and decommissioning of buildings and the site to levels which allow unrestricted use of these areas upon decommissioning; and

(B) the reclamation of byproduct material disposal areas in accordance with technical criteria delineated in subsection (q) of this section.

(2) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the licensee's operation, decommissioning and reclamation, and evaluates alternatives for mitigating these impacts.

(3) The security must also cover the payment of the charge for long-term surveillance and control for byproduct material disposal areas required by subsection (p)(3) of this section.

(4) In establishing specific security arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the agency may accept financial securities that have been consolidated with financial or security arrangements established to meet requirements of other federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the security that covers the decommissioning and reclamation of the buildings, site, and byproduct material disposal areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(5) The licensee's security mechanism will be reviewed annually by the agency to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of security liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

(6) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of security liability must be retained until final compliance with the reclamation plan is determined. This will yield a security that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the security mechanism must be open ended unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a security instrument that is written for a specified period of time (e.g., five years) yet which must be automatically renewed unless the security notifies the agency and the licensee some reasonable time (e.g., 90 days) prior to the renewal date of their intention not to renew. In such a situation the security requirement still exists and the licensee would be required to submit an acceptable replacement security within a brief period of time to allow at least 60 days for the agency to collect.

(7) Proof of forfeiture must not be necessary to collect the security so that in the event that the licensee could not provide an acceptable replacement security within the required time, the security shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any security instrument which is not open-ended, and must be agreed by all parties.

(8) Self-insurance, or any arrangement that essentially constitutes self insurance (e.g., a contract with a state or federal agency), will not satisfy the security requirement since this provides no additional assurance other than that which already exists through license requirements.

(p) Long-term care and maintenance requirements.

(1) Unless otherwise provided by the agency, each licensee licensed in accordance with this part for disposal of byproduct material shall make payments into the Radiation and Perpetual Care Fund in amounts specified by the agency. The agency shall make such determinations on a case-by-case basis.

(2) The final disposition of byproduct material should be such that the need for ongoing active maintenance is eliminated to the maximum extent practicable.

(3) A minimum charge of $250,000 (1978 dollars) or more, if demonstrated as necessary by the agency, shall be paid into the Radiation and Perpetual Care Fund to cover the costs of long-term care and maintenance. The total charge shall be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge shall be covered during the term of the license by additional security meeting the requirements of subsection (o) of this section. If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (e.g., if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge must be such that, with an assumed 1.0% annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(4) The requirements of this subsection shall apply only to those sites whose ownership is subject to being transferred to the state or the federal government. The total amount of funds collected by the agency in accordance with this subsection shall be transferred to the federal government if title and custody of the byproduct material disposal site is transferred to the federal government upon termination of the license.

(q) Technical requirements.

(1) Byproduct material handling and disposal systems shall be designed to accommodate full-capacity production over the lifetime of the facility. When later expansion of systems or operations may be likely, capability of the disposal system to be modified to accommodate increased quantities without degradation in long-term stability and other performance factors shall be evaluated.

(2) In selecting among alternative byproduct material disposal sites or judging the adequacy of existing sites, the following site features which would assure meeting the broad objective of isolating the tailings and associated contaminants without ongoing active maintenance shall be considered:

(A) remoteness from populated areas;

(B) hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from usable groundwater sources; and

(C) potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

(3) The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these site features.

(4) In the selection of disposal sites, primary emphasis shall be given to isolation of the byproduct material, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits (e.g., minimization of transportation of land acquisition costs). While isolation of byproduct material will also be a function of both site and engineering design, overriding consideration shall be given to siting features.

(5) Byproduct material should be disposed of in a manner such that no active maintenance is required to preserve conditions of the site.

(6) The applicant's environmental report shall evaluate alternative sites and disposal methods and shall consider disposal of byproduct material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the byproduct material from natural erosional forces.

(7) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations must be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(8) The following site and design requirements shall be adhered to whether byproduct material is disposed of above or below grade:

(A) the upstream rainfall catchment areas must be minimized to decrease erosion potential by flooding which could erode or wash out sections of the byproduct material disposal area;

(B) the topographic features shall provide good wind protection;

(C) the embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades which are as close as possible to those which would be provided if byproduct material was disposed of below grade. Slopes shall not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions which make such slopes acceptable shall be identified;

(D) a full self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels;

(E) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The agency will consider relaxing this requirement for extremely gentle slopes, such as those which may exist on the top of the pile;

(F) the following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(i) shape, size, composition, gradation of rock particles (excepting bedding material, average particles size shall be at least cobble size or greater);

(ii) rock cover thickness and zoning of particles by size; and

(iii) steepness of underlying slopes.

(G) individual rock fragments shall be dense, sound, and resistant to abrasion, and must be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(H) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and there is negligible drainage catchment area upstream of the pile, and there is good wind protection;

(I) all impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are no ongoing or potential processes, such as gully erosion, which would lead to impoundment instability;

(J) the impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand; and

(K) the impoundment should be designed to incorporate features that will promote deposition. Design features that promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized. The object of such a design feature would be to enhance the thickness of cover over time.

(9) Groundwater protection. The following groundwater protection requirements and those in paragraphs (10) and (11) of this subsection and subsection (s) of this section apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by paragraphs (28) and (29) of this subsection.

(A) The primary groundwater protection standard is a design standard for surface impoundments used to manage

byproduct material. Unless exempted under paragraph (9)(C) of this subsection, surface impoundments (except for an existing portion) shall have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. If the liner is constructed of materials that may allow wastes to migrate into the liner during the active life of the facility, impoundment closure shall include removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(B) The liner required by subparagraph (A) of this paragraph shall be:

(i) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(C) The applicant or licensee will be exempted from the requirements of subparagraph (A) of this paragraph if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(i) the nature and quantity of the wastes;

(ii) the proposed alternate design and operation;

(iii) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(D) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-off; from malfunctions of level controllers, alarms, and other equipment; and from human error.

(E) When dikes are used to form the surface impoundment, the dikes shall be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it shall not be presumed that the liner system will function without leakage during the active life of the impoundment.

(10) Byproduct materials shall be managed to conform to the following secondary groundwater protection requirements:

(A) hazardous constituents, as defined in subsection (c)(17) of this section, entering the groundwater from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period.

(B) specified concentration limits are those limits established by the agency as indicated in subparagraph (G) of this paragraph.

(C) the agency will also establish the point of compliance and compliance period on a site-specific basis through license conditions and orders.

(D) when the detection monitoring established under paragraphs (28) and (29) of this section indicates leakage of hazardous constituents from the disposal area, the agency will perform the following:

(i) identify hazardous constituents;

(ii) establish concentration limits;

(iii) set the compliance period; and

(iv) may adjust the point of compliance if needed in accordance with developed data and site information regarding the flow of groundwater or contaminants.

(E) even when constituents meet all three tests in the definition of hazardous constituent, the agency may exclude a detected constituent from the set of hazardous constituents on a site-specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the agency will consider the following:

(i) potential adverse effects on groundwater quality, considering the following:

(I) physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity of groundwater and the direction of groundwater flow;

(IV) proximity of groundwater users and groundwater withdrawal rates;

(V) current and future uses of groundwater in the area;

(VI) existing quality of groundwater, including other sources of contamination and cumulative impact on the groundwater quality;

(VII) potential for human health risks caused by human exposure to waste constituents;

(VIII) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(IX) persistence and permanence of potential adverse effects.

(ii) potential adverse effects on quality of hydraulically- connected surface water, considering the:

(I) volume and physical and chemical characteristics of the byproduct material in the licensed site;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity and quality of groundwater and the direction of groundwater flow;

(IV) patterns of rainfall in the region;

(V) proximity of the licensed site to surface waters;

(VI) current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(VII) existing quality of surface water, including potential impacts from other sources of contamination and the cumulative impact on surface water quality;

(VIII) potential for human health risks caused by human exposure to waste constituents;

(IX) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(X) persistence and permanence of the potential adverse effects.

(F) In making any determinations under subparagraphs (E) and (H) of this paragraph about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the Environmental Protection Agency and the Texas Natural Resource Conservation Commission (Commission).

(G) At the point of compliance, the concentration of a hazardous constituent shall not exceed the following:

(i) the agency approved background concentration in the groundwater of the constituents listed in 10 CFR 40, Appendix A, Criterion 13;

(ii) the respective value given in subsection (s) of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(iii) an alternate concentration limit established by the agency.

(H) Alternate concentration limits to background concentration or to the drinking water limits in subsection (s) of this section that present no significant hazard may be proposed by licensees for agency consideration. Licensees shall provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency must consider. The agency will establish a site-specific alternate concentration limit for a hazardous constituent, as provided in subparagraph (G) of this paragraph, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in subparagraph (D) of this paragraph.

(11) If the groundwater protection standards established under subparagraph (D) of this paragraph are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for agency approval prior to putting the program into operation, unless otherwise directed by the agency. The licensee's proposed program must address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and downgradient licensed site boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The agency will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(12) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(A) where synthetic liners are used, a leakage-detection system shall be installed immediately below the liner to ensure detection of any major failures. This is in addition to the groundwater monitoring program conducted as provided in paragraph (29) of this subsection. Where clay liners are proposed or relatively thin, in situ clay soils are to be relied upon for seepage control, tests shall be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to byproduct material solutions. Tests shall be run for a sufficient period of time to reveal any effects that may occur;

(B) mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the byproduct material impoundment;

(C) dewatering of byproduct material solutions by process devices and/or in situ drainage systems. At new sites, byproduct material solutions shall be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show byproduct material solutions are not amenable to such a system. Where in situ dewatering is to be conducted, the impoundment bottom shall be graded to assure that the drains are at a low point. The drains shall be protected by suitable filter materials to assure that drains remain free-running. The drainage system shall also be adequately sized to assure good drainage; and

(D) neutralization to promote immobilization of hazardous constituents.

(13) Technical specifications shall be prepared for installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, shall be established to assure that specifications are met. If adverse groundwater impacts or conditions conducive to adverse groundwater impacts occur due to seepage, action shall be taken to alleviate the impacts or conditions and restore groundwater quality to levels consistent with those before operations began. The specific seepage control and groundwater protection method, or combination of methods, to be used shall be worked out on a site-specific basis.

(14) In support of a byproduct material disposal system proposal, the applicant/licensee shall supply the following information:

(A) the chemical and radioactive characteristics of the waste solutions;

(B) the characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This shall include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations shall be determined. This information shall be gathered by borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes shall include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability shall not be determined on the basis of laboratory analysis of samples alone. A sufficient amount of field testing (e.g., pump tests) shall be conducted to assure actual field properties are adequately understood. Testing shall be conducted to make possible estimates of chemisorption attenuation properties of underlying soil and rock; and

(C) location, extent, quality, capacity, and current uses of any groundwater at and near the site.

(15) If ore is stockpiled, methods shall be used to minimize penetration of radionuclides and other substances into underlying soils.

(16) In disposing of byproduct material, licensees shall place an earthen cover over the byproduct material at the end of the facility's operations and shall close the waste disposal area in accordance with a design which provides reasonable assurance of control of radiological hazards to the following:

(A) be effective for 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years; and

(B) limit releases of radon-222 from uranium byproduct materials and radon-220 from thorium byproduct materials to the atmosphere so as not to exceed an average release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined in accordance with subparagraph (A) of this paragraph. This average applies to the entire surface of each disposal area over a period of at least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and cover materials. Radon emissions from cover materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

(17) In computing required byproduct material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the byproduct material should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. Cover shall not include materials which contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee shall demonstrate that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(18) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^2s averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(19) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in subsection (c)(26) of this section, the verification of radon-222 release rates required in paragraph (30) of this subsection must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(20) Within 90 days of the completion of all testing and analysis relevant to the required verification in paragraphs (30)(C) and (30)(D) of this subsection, the uranium recovery licensee shall report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s when averaged over the entire pile or impoundment. The licensee shall maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with subsection (r) of this section.

(21) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(22) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2), that, as a result of byproduct material, does not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) of radium-226, or in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(B) 15 pCi/g of radium-226, or in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below surface.

(23) The licensee shall also address the nonradiological hazards associated with the waste in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to groundwater or surface waters or to the atmosphere.

(24) For impoundments containing uranium byproduct materials, the final radon barrier must be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in subsection (c)(26) of this section, approved by the agency, by license amendment. (The term "as expeditiously as practicable considering technological feasibility" includes "factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and applicable interim milestones must be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown byproduct material and placement on the pile and the interim stabilization of the byproduct material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the byproduct material must also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(25) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in paragraph (18) of this subsection that releases of radon-222 do not exceed an average of 20 pCi/m^2s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m^2s, a verification of radon levels, as required by paragraph (18) of this subsection, must be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "available technology," and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(26) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m^2s averaged over the entire impoundment. The verification required in paragraph (18) of this subsection may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m^2s averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only byproduct material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (16) of this subsection. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(27) The licensee's closure plan shall provide reasonable assurance that institutional control will be provided for the length of time found necessary by the agency to ensure the requirements of paragraph (16) of this subsection are met.

(28) Prior to any major site construction, a preoperational monitoring program shall be conducted for one full year to provide complete baseline data on the site and its environs. Throughout the construction and operating phases of the project, an operational monitoring program shall be conducted to measure or evaluate compliance with applicable standards and rules; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

(29) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in paragraph (10)(D) of this subsection. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information shall provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring program must be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with paragraph (10)(D) of this subsection, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(30) Systems shall be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

(A) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of byproduct materials must be kept as low as is reasonably achievable.

(B) Checks shall be made and logged hourly of all parameters which determine the efficiency of emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency. Corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the uranium dryer stack. Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts shall be reported to the agency in writing within ten days of the subsequent restart.

(C) To control dusting from byproduct material, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting

to the maximum extent reasonably achievable. This requirement may be relaxed if byproduct material are effectively sheltered from wind, as in the case of below-grade disposal. Consideration shall be given in planning byproduct material disposal programs to methods for phased covering and reclamation of byproduct material impoundments. To control dusting from diffuse sources, applicants/licensees shall develop written operating procedures specifying the methods of control which will be utilized.

(D) Uranium recovery facility operations producing or involving thorium byproduct material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems (mrem) to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials to the general environment, radon-220 and its daughters excepted.

(E) Byproduct materials must be managed so as to conform to the applicable provisions of 40 CFR 440, as codified on January 1, 1983.

(31) Licensees/applicants may propose alternatives to the specific requirements in subsections (o)-(r) of this section. The alternative proposals may take into account local or regional conditions including geology, topography, hydrology, and meteorology.

(32) The agency may find that the proposed alternatives meet the agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of subsections (o)-(r) of this section and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E.

(33) All site-specific licensing decisions based on the criteria in subsections (o)-(r) of this section, or alternatives proposed by licensees/applicants shall take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the agency determines to be appropriate.

(34) Any proposed alternatives to the specific requirements in subsections (o)-(r) of this section must meet the requirements of 10 CFR 150.31(d).

(35) No new site shall be located in a 100-year floodplain or wetland as defined in "Floodplain Management Guidelines for Implementing Executive Order 11988."

(r) Land ownership of byproduct material disposal sites.

(1) These criteria relating to ownership of byproduct material and their disposal sites apply to all licenses terminated, issued, or renewed after November 8, 1981.

(2) Unless exempted by the NRC, title to land (including any affected interests therein) which is used for the disposal of byproduct material or which is essential to ensure the long-term stability of the disposal site and title to the byproduct material shall be transferred to the State of Texas or the United States prior to the termination of the license. Material and land transferred shall be transferred without cost to the State of Texas or the United States. In cases where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the NRC may take into account the status of the ownership of such land and interests therein, and the ability of a licensee to transfer title and custody thereof to the State.

(3) Any uranium recovery facility license must contain such terms and conditions as the agency determines necessary to assure that, prior to termination of the license, the licensee will comply with ownership requirements of this subsection for sites used for tailings disposal.

(4) For surface impoundments only, the applicant/licensee shall demonstrate a serious effort to obtain severed mineral rights and shall, in the event that fee simple title including all mineral rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to a NRC license prohibiting the disruption and disturbance of the tailings.

(5) If the NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the state or federal government will not endanger the public health and safety or the environment, the NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the NRC permits such use of such land, it will provide the person who transferred such land with the first refusal with respect to such use of such land.

(s) Maximum values for use in groundwater protection. The following is a list of the maximum concentration values to be used for groundwater protection.
Figure 1: 25 TAC §289.260(s)

This agency 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 January 21, 1998.

TRD-9800963
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 10, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 458–7236

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Texas Regulations for Control of Radiation

25 TAC §289.126

The Texas Department of Health (department), by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting the repeal of §289.126 and new §289.204, concerning fees for certificates of registration, radioactive material(s) licenses, emergency planning and implementation, and other regulatory services, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9622), and therefore the sections will not be republished.

The section adopted for repeal adopts by reference Part 12, titled "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services" of the *Texas Regulations for Control of Radiation* (TRCR). The new section incorporates language from Part 12 that has been rewritten in *Texas Register*

format and includes addition and revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the *Texas Register* format. The new section reflects the renumbering.

New definitions are added to §289.204(c) to clarify terms used in the schedule of fees for uranium recovery and byproduct disposal facility licenses. The revision to §289.204(k) implements the provisions of House Bill 2170, 75th Legislature, 1997, which changed the amount a licensee or registrant is required to pay for a late fee to 20% of the amount of the annual license or registration fee, not to exceed $10,000 annually for each licensee or registrant. New §289.204(l), (m), and (n) are added to specify the annual fees, adjustments to annual fees, and one-time fee adjustments for uranium recovery and byproduct disposal facility licenses. The fees are necessary to recover the costs of regulating these licenses. The revision of §289.204(c) and addition of §289.204(l), (m), and (n) are as a result of Senate Bill 1857, 75th Legislature, 1997, which transferred the jurisdiction for the regulation of uranium recovery and byproduct material disposal facilities from the Texas Natural Resource Conservation Commission (TNRCC) to the department.

The department received no public comments during the comment period for the repeal of §289.126 and new §289.204.

The repeal is adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. §289.126 Fees for Certificates or Registration, Radioactive Material(s), Emergency Planning and Implementation, and Other Regulatory Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 1998.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: September 26, 1997
For further information, please call: (512) 458–7236

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General

25 TAC §289.204

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: September 26, 1997
For further information, please call: (512) 458–7236

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General

25 TAC §§289.201, §289.202

The Texas Department of Health (department), by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting amendments to §§289.201, 289.202, 289.252, and 289.254, concerning general provisions, standards for protection against radiation, licensing of radioactive material, and licensing of radioactive waste processing and storage facilities, with changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9804), as a result of comments received during the 30-day comment period.

The amendment to §289.201 includes addition of a definition of radioactive waste, which is moved from §289.254 to a more appropriate location in §289.201; deletion of requirements for transport groups, which are moved to a more appropriate location in §289.254; and addition of a requirement for licensees to accept from the department samples collected from the licensees' facilities or from areas that are radioactive as a result of licensed activities. Section 289.202 is amended to clarify the radiation units that are to be used on records and to clarify decommissioning standards to be used by a licensee prior to vacating facilities or land. The amendment to §289.252 adds decommissioning timeliness and recordkeeping requirements and criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning. In §289.254, references to transport groups are changed to waste processing and storage categories to reflect that use of this term is unique to this section. Definitions and other requirements concerning packaging and transportation of radioactive material are deleted from §§289.201, 289.202, 289.252, and 289.254 and are moved to a more appropriate location in new §289.257. The amendments to §§289.202 and 289.252 are items of compatibility with the United States Nuclear Regulatory Commission (NRC) and as an agreement state, Texas must adopt them.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §289.201(b), the department added a definition for "filing timeframes" to clarify document submission requirements in this chapter.

Change: Concerning §289.201(c)(2)(D), the department deleted the word "commission" and replaced this with "NRC" because the Texas Radiation Control Act, Chapter 401, Health and Safety Code, defines "commission" as the Texas Natural Resource Conservation Commission rather than the NRC.

Change: Concerning §289.201(q)(1), the department replaced the incorrect figure which was published in the October 3, 1997 issue of the *Texas Register* (22 TexReg 9804) with the correct figure.

Change: Concerning §289.202, the department changed "1" to "one" throughout the section to comply with *Texas Register* format.

Change: Concerning §289.252(d)(7), the department changed "TRC Form 12-2L" to "BRC Form 252-1" to state the correct applicable form.

Change: Concerning §289.252(q)(2), the department changed the end of the last sentence to read, "...of the terms and conditions of the Act, this chapter, or of the license, or order of the agency." for clarification and consistency with other sections in this chapter.

Change: Concerning §289.252(t), the department deleted the existing text and replaced the text with a sentence to read "Requirements for the preparation of radioactive material for transport are specified in §289.257 of this title." to clarify which section of this chapter contains the appropriate requirements for transport of radioactive material.

The following comments were received concerning the proposed section. Following each comment is the department's response and any resulting change(s). Other minor editorial changes were made for clarification purposes.

Comment. Concerning §289.201(b)(57) now located in §289.201(b)(58), one commenter suggested changing the word "individual" to read "worker" as in: "Any individual, except a worker who is receiving an occupational dose...".

Response. The department agrees that this wording would clarify the specified subsection; however, this section is an item of compatibility with the United States Nuclear Regulatory Commission (NRC), and as an agreement state, Texas must adopt this section as comparable to NRC's regulations. Therefore, the definition cannot be amended at this time. No change was made as a result of the comment.

Comment. Concerning §289.201(b)(65) now located in §289.201(b)(66), one commenter suggested changing the word "individual" to read "worker" as in: "The dose received by a worker in the course of employment in which the workers assigned duties involve exposure to sources of radiation from licensed/registered...". .

Response. The department agrees that this wording would clarify the specified subsection; however, this section is an item of compatibility with the United States Nuclear Regulatory Commission, and as an agreement state, Texas must adopt this section as comparable to NRC's regulations. Therefore, the definition cannot be amended at this time. No change was made as a result of the comment.

Comment. Concerning §289.201(d)(2), one commenter stated that the section appears to require all records to contain the signature and date by "authorized personnel". However, who "authorized personnel" are is unclear. The commenter suggested further clarification of the term "authorized personnel."

Response. The department disagrees with the commenter because the "authorized personnel" will vary from licensee to licensee and registrant to registrant based on the scope of operation, therefore the subsection as stated allows for necessary flexibility. No change was made as a result of the comment.

Comment. Concerning §289.201(g)(1)(E), one commenter stated that this new requirement specifies: "For sealed sources contained in a device, test samples are obtained when the source is in the "off" position." This requirement would require that a fixed gauging device have the shutter closed (be in the "off" position) before it could be leak tested. The commenter suggested clarification to exclude "fixed gauging devices in operation at the time of leak testing."

Response. The department disagrees with the commenter because the subsection as stated does not imply that a fixed gauging device has to have the shutter closed before it can be leak tested. No change was made as a result of the comment.

Comment. Concerning §289.252 (l)(15) and (16), one commenter questioned whether the reference in these paragraphs should be to paragraph (17) instead of "this paragraph."

Response. The department agrees and has corrected the references in question.

Comment. Concerning §289.252(l)(19)(A), one commenter suggested the words "source material" be replaced with "radioactive material".

Response. The department agrees and has replaced the words "source material" with "radioactive material."

Comment. Concerning §289.252(u), one commenter stated that language equivalent to 10 Code of Federal Regulations (CFR) 30.35(c)(4) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(c)(4) language to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.252(u)(2)(B), one commenter stated that language equivalent to 10 CFR 30.35(b)(2) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(b)(2) language to comply with NRC compatibility requirements because as an agreement state with the NRC, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.252(u)(5), one commenter stated that language equivalent to 10 CFR 30.35(e) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(e) language to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.252(u)(6)(B), one commenter stated that the second "subsection (w)(3) of this section" reference is incorrect and should be "subsection (w)(7) of this section."

Response. The department agrees and has corrected the reference in question.

Comment. Concerning §289.254(h), one commenter stated that language equivalent to 10 CFR 30.35(c)(4) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(c)(4) language to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.254(h)(2)(B), one commenter stated that language equivalent to 10 CFR 30.35(b)(2) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(b)(2) language to comply with NRC compatibility requirements because as an agreement state with the NRC, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.254(h)(5), one commenter stated that language equivalent to 10 CFR 30.35(e) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 30.35(e) language to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.254(h)(6)(B), one commenter stated that the second "§289.254(w)(3) of this section" reference is incorrect and should be "§289.254(w)(7) of this section".

Response. The department agrees and has corrected the reference in question.

Commenters included a representative from the United States Nuclear Regulatory Commission and Herb Dushane. The two commenters were generally in favor of the proposal; however, they presented comments and suggestions for changes to the proposal as previously discussed.

The amendments are adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.201. General Provisions.

(a) Scope. Except as otherwise specifically provided, this section applies to all persons who receive, possess, use, transfer, or acquire any source of radiation, provided, however, that nothing in this section shall apply to any person to the extent such person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to sources of radiation in the possession of federal agencies. Attention is directed to the fact that regulation by the state of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the NRC and to Part 150 of the NRC regulations (10 Code of Federal Regulations (CFR) Part 150).

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

(1)-(8) (No change.)

(9) Airborne radioactivity area - A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I, Column 1 of §289.202(ggg)(2)(F) (relating to Standards for Protection Against Radiation) of this title; or

(B) (No change.)

(10)-(11) (No change.)

(12) Becquerel (Bq) - The SI unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps).

(13)-(14) (No change.)

(15) Byproduct material - Byproduct material is defined as:

(A) (No change.)

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

(16)-(19) (No change.)

(20) Commission - The Texas Natural Resource Conservation Commission.

(21)-(22) (No change.)

(23) Curie (Ci) - A unit of measurement of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (mCi) and the microcurie (μCi). One mCi = 1×10^{-3} Ci = 3.7×10^{7} dps. One μCi = 1×10^{-6} Ci = 3.7×10^{4} dps. One nanocurie (nCi) = 1×10^{-9} Ci = 3.7×10^{1} dps. One picocurie (pCi) = 1×10^{-12} Ci = 3.7×10^{-2} dps.

(24) (No change.)

(25) Deep dose equivalent (H_d), that applies to external whole body exposure - The dose equivalent at a tissue depth of 1 centimeter (cm) (1000 milligrams per square centimeter (mg/cm^2)).

(26)-(37) (No change.)

(38) Eye dose equivalent - The external dose equivalent to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm^2).

(39) Filing timeframes - Documents transmitted to the agency will be deemed submitted on the date of the postmark, telegram, telefacsimile or electronic media transmission.

(40) Generally applicable environmental radiation standards - Standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(41) Gray (Gy) - The SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (J/kg) (100 rad).

(42) High radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(43) Human use - The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(44) Individual - Any human being.

(45) Individual monitoring - The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.202(c) of this title); or

(C) dose equivalent by the use of survey data.

(46) Individual monitoring devices - Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal air sampling devices.

(47) Inspection - An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(48) Internal dose - That portion of the dose equivalent received from radioactive material taken into the body.

(49) Ionizing radiation - Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(50) Land disposal facility - The land, buildings, and equipment that are intended to be used for the disposal of radioactive wastes into the subsurface of the land.

(51) License - A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(52) Licensed material - Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(53) Licensee - Any person who is licensed by the agency in accordance with this chapter and the Act.

(54) Licensing state - Any state with rules equivalent to the *Suggested State Regulations for Control of Radiation* relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc. For the purposes of evaluation and/or distribution of sealed sources, this includes Licensing State Status: Product Review Only.

(55) Lost or missing source of radiation - A source of radiation whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(56) Mammography system certification - An authorization for the use of a mammography system.

(57) Manufacture - To fabricate or mechanically produce.

(58) Member of the public - Any individual, except when that individual is receiving an occupational dose.

(59) Minimal threat - That during the operation of electronic devices capable of generating or emitting fields of radiation:

(A) no deliberate exposure of an individual occurs;

(B) the radiation is not emitted in an open beam configuration; and

(C) no known physical injury to an individual has occurred.

(60) Minor - An individual less than 18 years of age.

(61) Misadministration - The administration of:

(A) a radiopharmaceutical or radiation from a sealed source other than the one intended;

(B) a radiopharmaceutical or radiation from a sealed source to the wrong patient;

(C) a radiopharmaceutical or radiation from a sealed source by a route of administration other than that intended by the prescribing physician;

(D) a diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 50%;

(E) a therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 10%; or

(F) a therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10%.

(62) Monitoring - The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(63) NARM - Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(64) Natural radioactivity - Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(65) NRC - The United States Nuclear Regulatory Commission (NRC) or its duly authorized representatives.

(66) Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(67) Particle accelerator - Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation into a medium at energies usually in excess of 1 MeV.

(68) Person - Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor,

representative, agent, or agency of the foregoing, other than the NRC, and other than federal government agencies licensed or exempted by the NRC.

(69) Personnel monitoring equipment (See definition for individual monitoring devices.)

(70) Pharmacist - An individual licensed by the Texas State Board of Pharmacy, and with license in good standing, to compound and dispense drugs, prescriptions, and poisons.

(71) Physician - An individual licensed by the Texas State Board of Medical Examiners, with license in good standing.

(72) Principal activities - Activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(73) Public dose - The dose received by a member of the public from exposure to sources of radiation released by a licensee, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(74) Quality factor (Q) - The modifying factor listed in subsection (o)(3) and (4) of this section that is used to derive dose equivalent from absorbed dose.

(75) Quarter (calendar quarter) - A period of time equal to one-fourth of the year observed by the licensee or registrant, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(76) Rad - The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 gray).

(77) Radiation - One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(78) Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 cm from the source of radiation or from any surface that the radiation penetrates.

(79) Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(80) Radiation safety officer (RSO) - An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, and who must be specifically authorized on a certificate of registration or radioactive material license.

(81) Radioactive material - Any material (solid, liquid, or gas) that emits radiation spontaneously.

(82) Radioactive waste - Any discarded or unwanted radioactive material, unless exempted by agency rule or any radioactive material that would require processing before it could be put to a beneficial reuse. The term does not include byproduct material as defined in paragraph (15) (B) of this subsection, or uranium ore, naturally occurring radioactive material (NORM) waste, or oil and gas NORM waste.

(83) Radioactivity - The disintegration of unstable atomic nuclei with the emission of radiation.

(84) Radiobioassay (See definition for bioassay.)

(85) Registrant - Any person issued a certificate of registration by the agency in accordance with this chapter and the Act.

(86) Regulation (See definition for rule.)

(87) Regulations of the United States Department of Transportation (DOT) - The requirements in 49 CFR Parts 100-189.

(88) Rem - The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(89) Research and development - Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(90) Restricted area - An area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(91) Roentgen (R) - The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} C/kg of air. (See definition for exposure.)

(92) Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended) - Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(93) Sealed source - Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(94) Shallow dose equivalent (H_s), (that applies to the external exposure of the skin or an extremity) - The dose equivalent at a tissue depth of 0.007 cm (7 mg/cm^2) averaged over an area of 1 square centimeter (cm^2).

(95) SI - The abbreviation for the International System of Units.

(96) Sievert - The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(97) Site boundary - That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(98) Source material - Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(99) Source of radiation - Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(100) Special form radioactive material - Radioactive material that satisfies the following conditions:

(A) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(B) The piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch (in)); and

(C) It satisfies the requirements specified by the NRC. A special form encapsulation designed in accordance with the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the NRC requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.

(101) Special nuclear material - Special nuclear material is defined as:

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, in accordance with the provisions of the Atomic Energy Act of 1954, §51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(102) Special nuclear material in quantities not sufficient to form a critical mass - Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained uranium-235; uranium-233 in quantities not exceeding 200 g; plutonium in quantities not exceeding 200 g; or any combination of them in accordance with the following formula.

(A) For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity).

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:
Figure 1: 25 TAC §289.201(b)(102)(B)

(103) Special units - The conventional units historically used by licensees and registrants, i.e., curie (activity), rad (absorbed dose), and rem (dose equivalent).

(104) Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examination of location of materials and equipment, and measurements of levels of radiation or concentration of radioactive material present.

(105) Termination - A release by the agency of the obligations and authorizations of the licensee or registrant under the terms of the license or certificate of registration. It does not relieve a person of duties and responsibilities imposed by law.

(106) Test - A method of determining the characteristics or condition of sources of radiation or components thereof.

(107) These rules - All sections of the *Texas Regulations for Control of Radiation* (TRCR).

(108) Total effective dose equivalent (TEDE) - The sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(109) Total organ dose equivalent (TODE) - The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) of this title.

(110) Transport index - The dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(A) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 feet); or

(B) For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in mrem/hr at 1 m (3.3 feet), or, for criticality control purposes, the number obtained as described in 10 CFR 71.59, whichever is larger.

(111) Type A quantity - A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in §289.257(s)(2) of this title (relating to Packaging and Transportation of Radioactive Material) or may be determined by procedures described in §289.257(s)(1)-(4) of this title.

(112) Type B quantity - A quantity of radioactive material greater than a type A quantity.

(113) Unrefined and unprocessed ore - Ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(114) Unrestricted area (uncontrolled area) - An area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(115) Veterinarian - An individual licensed by the Texas Board of Veterinary Medical Examiners, with license in good standing.

(116) Week - Seven consecutive days starting on Sunday.

(117) Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(118) Worker - An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(119) Working level (WL) - Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(120) Working level month (WLM) - An exposure to one working level for 170 hours - - 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(121) Year - The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) Exemptions.

(1) General provision. The agency may, upon application therefor or upon its own initiative, grant exemptions from the requirements of this chapter as it determines will not result in undue hazard to public health and safety or property. In determining such exemptions, the agency will consider:

(A) state of technology,

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(2) United States Department of Energy (DOE) contractors and NRC contractors. Any DOE contractor or subcontractor and any NRC contractor or subcontractor of the following categories operating within Texas is exempt from this chapter, with the exception of §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), to the extent that such contractor or subcontractor under that individual's contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the DOE at United States government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(B) prime contractors of the DOE performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

(C) prime contractors of the DOE using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the DOE or of the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) in accordance with the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and the environment.

(d) Records.

(1) Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of all licensed or registered sources of radiation. These records shall be maintained by the licensee or registrant until disposal is authorized by the agency. Additional record requirements are specified elsewhere in this chapter. All records required by this chapter shall be accurate and factual.

(2) Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(3) Each record required by this chapter must be legible throughout the retention period specified by the agency. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, or specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(e) Inspections.

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

(3) Routine inspection of radiation machines and services.

(A) Routine inspections by agency personnel will be made no more frequently than the intervals specified in subsection (q)(1) of this section. Registrants having certificates of registration authorizing multiple uses will be inspected at the most frequent interval specified for the uses authorized.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, for those radiation machines determined by the agency to constitute a minimal threat to human health and safety, the routine inspection interval will be five years. The applicable categories are listed in subsection (q)(2) of this section.

(C) (No change.)

(4) Training for agency inspectors of electronic products.

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

(C) A person performing inspections of electronic products for the uses described in subparagraph (A) of this paragraph will receive training specified in subsection (q)(3) of this section.

(f) Tests.

(1) Each licensee and registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable tests as the agency deems appropriate or necessary including, but not limited to, tests of:

(A) sources of radiation;

(B) facilities wherein sources of radiation are used or stored;

(C) radiation detection and monitoring instruments; and

(D) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

(2) Each licensee is required to accept from the agency, samples collected from its facility(ies) or from areas that are radioactive as a result of its licensed activities.

(g) Tests for leakage and/or contamination of sealed sources.

(1) The licensee in possession of any sealed source shall assure that:

(A) (No change.)

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the agency, or by the NRC, an agreement state, or a licensing state after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title (relating to Licensing of Radioactive Material);

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the agency, after evaluation of information specified in §289.252(h)(7)(D) and

(E) of this title, or by the NRC, an agreement state, or a licensing state.

(D) (No change.)

(E) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 0.005 μCi (185 becquerels (Bq)) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted where contamination might accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position;

(F) the test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 0.001 μCi (37 Bq) of radon-222 in a 24-hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume, and time; and

(G) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 0.005 μCi (185 Bq) of a radium daughter that has a half-life greater than four days.

(2) A licensee need not perform tests for leakage or contamination on the following sealed sources:

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

(C) sealed sources containing 100 μCi (3.7 megabecquerels (MBq)) or less of beta or photon-emitting material or 10 μCi (370 kilobecquerels (kBq)) or less of alpha-emitting material;

(D)-(F) (No change.)

(3) Analysis of tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the agency, the NRC, an agreement state, or a licensing state, to perform such services.

(4) (No change.)

(5) The following shall be considered evidence that a sealed source is leaking:

(A) the presence of 0.005 μCi (185 becquerels Bq) or more of removable contamination on any test sample;

(B) leakage of 0.001 μCi (37 Bq) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium; or

(C) the presence of removable contamination resulting from the decay of 0.005 μCi (185 Bq) or more of radium.

(6) (No change.)

(7) Reports of test results for leaking or contaminated sealed sources shall be made in accordance with §289.202(bbb) of this title.

(h)-(i) (No change.)

(j) Impounding. Sources of radiation shall be subject to impounding in accordance with §401.068 of the Act and §289.112 of this title (relating to Hearing and Enforcement Procedures).

(k) Prohibited uses.

(1) A hand-held fluoroscopic screen shall not be used with x-ray equipment unless it has been listed in the Registry of Sealed Sources and Devices maintained by the agency or the NRC, or accepted for certification by the United States Food and Drug Administration (FDA), Center for Devices and Radiological Health.

(2) (No change.)

(l)-(n) (No change.)

(o) Units of exposure and dose.

(1) As used in this chapter, the unit of exposure is the coulomb per kilogram (C/kg) of air. One roentgen (R) is equal to 2.58×10^{-4} C/kg.

(2) As used in this chapter, the units of dose are as follows:

(A) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg/g or 0.01 J/kg (0.01 gray). Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 J/kg (100 rads).

(B) (No change.)

(C) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rems).

(3) (No change.)

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per

hour or rem per hour, as provided in subsection (o)(3) of this section, 1 rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of this section, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rad (gray) to dose equivalent in rem (Sv).
Figure 4: 25 TAC §289.201(o)(4)

(p) Units of activity. For purposes of this chapter, activity is expressed in the special unit of curie (Ci) (becquerel (Bq)), or its multiples, or disintegrations or transformations per second (dps or tps).

(1) One Ci = 3.7 x 10^{10} dps or tps = 3.7 x 10^{10} (Bq) = 2.22 x 10^{12} disintegrations or transformations per minute (dpm or tpm).

(2) One Bq = 1 dps or tps.

(q) Appendices.

(1) Routine inspection intervals for registrants.
Figure 5: 25 TAC §289.201(q)(1)

(2) Minimal threat radiation machines. The following radiation machines are considered to be of minimal threat:

(A) electron microscope;

(B) x-ray fluorescence (machine);

(C) x-ray gauges radiography - certified cabinet x-ray only;

(D) particle size analyzer (x-ray);

(E) baggage or package x-ray;

(F) electron beam welding;

(G) ion implantation devices; and

(H) cathodoluminescence devices;

(3) Training for agency inspectors of electronic products.

(A) Objectives. Training of agency inspectors of electronic products will be conducted by the agency. Upon completion of training, the inspector will be able to:

(i) select and operate the necessary testing equipment used to perform an inspection of electronic products;

(ii) utilize radiation protection principles;

(iii) operate radiation detection instruments;

(iv) define basic regulatory terminology;

(v) apply this section regarding electronic products;

(vi) perform routine agency inspections of electronic products;

(vii) complete agency inspection documentation;

(viii) demonstrate knowledge of agency ethics, professional, and technical policies; and

(ix) successfully achieve the objectives in this subparagraph.

(B) Initial training program.

(i) Initial training will be conducted during a six month period.

(ii) All training evaluation instruments will be developed by the agency.

(iii) Instruments to be used in determining a proficiency level are as follows:

(I) evaluation of each inspectors training needs prior to initial training;

(II) evaluation of knowledge obtained and verification of tasks performed by each inspector subsequent to training received by the agency; and

(III) evaluation of each inspector's task performance by the agency.

(C) Continuing education.

(i) The agency inspector of electronic products will accumulate 24 hours of continuing education regarding electronic products, at intervals not to exceed 24 months. These hours of continuing education may be acquired as follows:

(I) documented continuing education earned in an agency-accepted training format; and

(II) agency staff meetings.

(ii) Failure to obtain 24 hours of continuing education within each 24 month interval may result in a reassessment by the agency of an agency inspector's proficiency level.

(iii) After the initial training period, each inspector of electronic products will be evaluated by the agency, at intervals not to exceed 12 months.

(D) Agency proficiency standards. The agency proficiency standards for agency inspectors of electronic products are as follows.

(i) Level I. The agency inspector has not successfully achieved the objectives in subparagraph (A) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections will not be performed.

(ii) Level II. The agency inspector has partially achieved the objectives in subparagraph (A) of this paragraph, but has not achieved the objective in subparagraph (A)(ix) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections are not permitted for the type of electronic products for which the objectives of subparagraph (A)(ix) of this paragraph have not been achieved. Unsupervised inspections may be performed for the type of electronic products for which the objectives in subparagraph (A)(ix) of this paragraph have been successfully achieved.

(iii) Level III. The agency inspector has successfully achieved the objectives in subparagraph (A) of this paragraph. Supervision is not required for routine inspections.

§289.202. Standards for Protection Against Radiation.

(a) (No change.)

(b) Scope. Except as specifically provided in other sections of this chapter, this section applies to persons licensed or registered by the agency to receive, possess, use, or transfer sources of radiation. The limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical

research programs. However, no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.

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

(1) Annual limit on intake (ALI) - The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert (Sv)) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

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

(5) Derived air concentration-hour (DAC-hour) - The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 Sv).

(6)-(15) (No change.)

(16) Very high radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at 1 meter (m) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, Sv and rem.

(17) (No change.)

(d)-(e) (No change.)

(f) Occupational dose limits for adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures in accordance with subsection (k) of this section, to the following dose limits.

(A) An annual limit shall be the more limiting of:

(i) the total effective dose equivalent being equal to 5 rems (0.05 Sv); or

(ii) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 Sv).

(B) The annual limits to the lens of the eye, to the skin, and to the extremities shall be:

(i) an eye dose equivalent of 15 rems (0.15 Sv); and

(ii) a shallow dose equivalent of 50 rems (0.5 Sv) to the skin or to any extremity.

(2)-(6) (No change.)

(7) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams (mg) in a week in consideration of chemical toxicity. See footnote 3 of subsection (ggg)(2) of this section.

(8) (No change.)

(g) Compliance with requirements for summation of external and internal doses.

(1) (No change.)

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

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

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per uxnit intake for any organ or tissue.

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

(h) (No change.)

(i) Determination of internal exposure.

(1)-(7) (No change.)

(8) When determining the committed effective dose equivalent, the following information may be considered.

(A) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 Sv) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 Sv), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 Sv), that is, the stochastic ALI, is listed in parentheses in Table I of subsection (ggg)(2) of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALI, the licensee shall also demonstrate that the limit in subsection (f)(1)(A)(ii) of this section is met.

(j) Determination of occupational dose for the current year.

(1) For each individual who is likely to receive, in a year, an occupational dose requiring monitoring in accordance with subsection (q) of this section, the licensee or registrant shall determine the occupational radiation dose received during the current year.

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

(4) If the licensee or registrant is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee or registrant, the licensee or registrant shall assume in establishing administrative controls in accordance with subsection (f)(8) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 millirems (mrem) (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) If an individual has incomplete (e.g., a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the licensee or registrant during the current year, the licensee or registrant shall:

(A) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv) for each quarter;

(B) assume that the allowable dose limit for the individual is reduced by 416 mrem (4.16 mSv) for each month; or

(C) (No change.)

(6) (No change.)

(k)-(1) (No change.)

(m) Dose to an embryo/fetus.

(1) If a woman declares her pregnancy, the licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subsection (f)(1) of this section are applicable to the woman. See subsection (rr) of this section for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any 1 month.

(3) (No change.)

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 0.45 rem (4.5 mSv), the licensee or registrant shall be deemed to be in compliance with paragraph (1) of this subsection, if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

(n) Dose limits for individual members of the public.

(1) Each licensee or registrant shall conduct operations so that:

(A) except as provided in subparagraph (B) of this paragraph, the total effective dose equivalent to individual members of the public from the licensed and/or registered operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage in accordance with subsection (gg) of this section, background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs;

(B) the total effective dose equivalent to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 mSv) in a year; and

(C) the dose in any unrestricted area from licensed and/or registered external sources does not exceed 0.002 rem (0.02 mSv) in any one hour.

(2) (No change.)

(3) A licensee or an applicant for a license may apply for prior agency authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv). This application shall include the following information:

(A) (No change.)

(B) the licensee's program to assess and control dose within the 0.5 rem (5 mSv) annual limit; and

(C) (No change.)

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

(o) Compliance with dose limits for individual members of the public.

(1) (No change.)

(2) A licensee or registrant shall show compliance with the annual dose limit in subsection (n) of this section by:

(A) (No change.)

(B) demonstrating that:

(i) (No change.)

(ii) if an individual were continuously present in an unrestricted area, the dose from external sources of radiation would not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (0.5 mSv) in a year.

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

(p) General surveys and monitoring.

(1) (No change.)

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, another agreement state, a licensing state, or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B)-(E) (No change.)

(3)-(5) (No change.)

(q) Conditions requiring individual monitoring of external and internal occupational dose. Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum:

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

(3) each licensee shall monitor, to determine compliance with subsection (i) of this section, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) (No change.)

(B) minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.05 rem (0.5 mSv).

(r) (No change.)

(s) Control of access to high radiation areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 mSv) in one hour at 30 centimeters (cm) from the source of radiation from any surface that the radiation penetrates;

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

(2)-(7) (No change.)

(t) Control of access to very high radiation areas.

(1) In addition to the requirements in subsection (s) of this section, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in one hour at 1 m from a source of radiation or any surface through which the radiation penetrates at this level. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation.

(2) (No change.)

(u) Control of access to very high radiation areas for irradiators.

(1) (No change.)

(2) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in one hour at 1 m from a source of radiation that is used to irradiate materials shall meet the following requirements.

(A) Each entrance or access point shall be equipped with entry control devices that:

(i) (No change.)

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(iii) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 0.1 rem (1 mSv) in one hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subparagraph (A) of this paragraph:

(i) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) (No change.)

(C) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) (No change.)

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

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour.

(I)-(K) (No change.)

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

(v)-(w) (No change.)

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes in accordance with subsection (w) of this section.

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

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i)-(iv) (No change.)

(v) determination by a physician prior to initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is physically able to use the respiratory protection equipment.

(D)-(F) (No change.)

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

(y)-(aa) (No change.)

(bb) Exceptions to posting requirements.

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

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source(s) provided the radiation level at 30 centimeters from the surface of the sealed source container(s) or housing(s) does not exceed 0.005 rem (0.05 mSv) per hour.

(cc)-(dd) (No change.)

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(s)(1) of this title (relating to Packaging and Transportation of Radioactive Material), shall make arrangements to receive:

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

(2) Each licensee shall:

(A) (No change.)

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR 172.403 and 172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(s)(1) of this title; and

(C) (No change.)

(3) (No change.)

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) The level of removable radioactive contamination on the external surfaces of each package offered for shipment shall be ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters (cm^2) of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in clause (iii) of this subparagraph, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in clause (ii) of this subparagraph at any time during transport. If other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed ten times the limits listed in clause (ii) of this subparagraph.

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

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 millirems per hour (mrem/hr) (2 millisiverts per hour (mSv/hr)) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.

(ii) For a package transported in exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in clause (i) of this subparagraph but shall not exceed any of the following:

(I) 200 mrem/hr (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1,000 mrem/h (10 mSv/hr):

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

(II) 200 mrem/hr (2 mSv/hr) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle (a flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 200 mrem/hr (2 mSv/hr) at the surface.);

(III) 10 mrem/hr (0.1 mSv/h) at any point 2 m from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point 2 m from the vertical planes projected from the outer edges of the vehicle; and

(IV) 2 mrem/hr (0.02 mSv/hr) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with 22.12 of Texas Regulations for Control of Radiation (TRCR) Part 22 as adopted by reference in §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections).

(5)-(6) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section or in, §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.252 of this title, or §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), §289.257 of this title, or to the United States Department of Energy (DOE);

(B)-(D) (No change.)

(2) (No change.)

(gg) Discharge by release into sanitary sewerage.

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

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

(D) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (Ci) (185 gigabecquerels (GBq)) of hydrogen-3, 1 Ci (37 GBq) of carbon-14, and 1 Ci (37 GBq) of all other radioactive materials combined.

(2) (No change.)

(hh)-(ii) (No change.)

(jj) Transfer for disposal and manifests.

(1) The control of transfers of low-level radioactive waste intended for disposal at a licensed low-level radioactive waste disposal facility, the establishment of a manifest tracking system, and additional requirements concerning transfers and recordkeeping for those wastes are found in §289.257(s)(5) of this title.

(2) Each person involved in the transfer of waste for disposal including the waste generator, waste collector, and waste processor, shall comply with the requirements specified in §289.257(s)(5) of this title.

(kk) Compliance with environmental and health protection regulations. Nothing in subsections (ff), (gg), (hh), or (jj) of this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of in accordance with subsections (ff), (gg), (hh), or (jj) of this section.

(ll) General provisions for records.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsection (ggg)(6) of this section. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a

convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, when recording information on shipment manifests, as required in §289.257 of this title, information must be recorded in SI units or in SI and units as specified in paragraph (1) of this subsection.

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(4) Records required in accordance with §289.201(d) of this title, and subsections (mm), (nn), (oo), (tt), and (uu) of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey. Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(5) Copies of records required in accordance with §289.201(d) of this title, and subsections (mm) through (uu) of this section, and by license or certificate of registration condition that are relevant to operations at an additional authorized use/storage site shall be maintained at that site in addition to the main site specified on a license or certificate of registration.

(mm)-(ss) (No change.)

(tt) Records of discharge, treatment, or transfer for disposal.

(1) Each licensee shall maintain records of the discharge or treatment of licensed materials made in accordance with subsection (gg) and (hh) of this section and of transfers for disposal made in accordance with subsection (jj) of this section and §289.257 of this title.

(2) (No change.)

(uu) (No change.)

(vv) Form of records. Each record required by this chapter shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

(ww) (No change.)

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause:

(A) an individual to receive:

(i) a total effective dose equivalent of 25 rems (0.25 Sv) or more;

(ii) an eye dose equivalent of 75 rems (0.75 Sv) or more; or

(iii) (No change.)

(B) (No change.)

(2) Each licensee or registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause:

(A) an individual to receive, in a period of 24 hours:

(i) a total effective dose equivalent exceeding 5 rems (0.05 Sv);

(ii) an eye dose equivalent exceeding 15 rems (0.15 Sv); or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 Sv); or

(B) (No change.)

(3)-(5) (No change.)

(yy)-(zz) (No change.)

(aaa) Notifications and reports to individuals.

(1) Requirements for notification and reports to individuals of exposure to sources of radiation are specified in §289.114 of this title.

(2) When a licensee or registrant is required in accordance with subsection (yy) or (zz) of this section to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also notify the individual and provide a copy of the report submitted to the agency, to the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of 22.13(a) of TRCR Part 22 as adopted by reference in §289.114 of this title.

(bbb) (No change.)

(ccc) Vacating premises.

(1) Each licensee, registrant, or person possessing non-exempt sources of radiation shall, no less than 30 days before vacating or relinquishing possession or control of premises, notify the agency, in writing, of the intent to vacate.

(2) The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsections (ddd) and (eee) of this section.

(3) Notwithstanding the limits set forth in subsections (ddd) and (eee) of this section, contamination levels must be maintained in unrestricted areas so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) above background per year.

(4) No licensee shall vacate a facility or land, or release a facility or land for unrestricted use, until the annual total effective dose equivalent to a member of the public resulting from radioactive material remaining from licensed activities (excluding radium and its decay products) does not exceed 25 mrem (0.25 mSv) per year above background. The concentration for radium in soil shall be equivalent to or below the limits in subsection (eee) of this section.

Notwithstanding the limits in this paragraph, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation ALARA. The licensee shall conduct all necessary radiation surveys and modeling and shall provide reports and documentation to demonstrate that the requirements for release for unrestricted use have been met. The Agency may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release for unrestricted use.

(ddd) Soil contamination limits.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ggg)(8) of this section; or

(B) the effluent concentrations in Table III of subsection (ggg)(2) of this section, with the units changed from microcuries per milliliter to microcuries per gram, for radionuclides not specified in subsection (ggg)(8) of this section or paragraph (3) of this subsection.

(2) (No change.)

(3) Except for the requirements in §289.127 of this title and notwithstanding the limits imposed by paragraph (1) of this subsection, the concentration of radium-226 or radium-228 in soil averaged over any 100 square meters (m^2) shall not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(4) 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228 in vegetation; and

(5) the following limits, based on dry weight, averaged over any 100 m^2 of area for natural uranium with no daughters present:

(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(eee) Surface contamination limits for facilities and equipment.

(1) Prior to vacating any facility or releasing areas or equipment for unrestricted use, each licensee shall ensure that radioactive contamination has been removed to ALARA levels. In no case shall the licensee vacate a facility or release areas or equipment for unrestricted use until radioactive surface contamination levels are below the limits specified in subsection (ggg)(6) of this section.

(2) In addition to meeting the surface contamination limits of paragraph (1) of this subsection, porous materials (e.g., concrete), that are to be released for unrestricted use, shall be evaluated to determine whether radioactive materials have penetrated to the interior of the material. If radioactive contamination has penetrated into the material, analysis of the average concentration, in pCi/g, shall be made. The material may be released for unrestricted use if the radionuclide concentrations do not exceed the limits specified for soil in subsection (ddd) of this section.

(fff) Exemption of specific wastes.

(1) A licensee may discard the following licensed material without regard to its radioactivity:

(A) 0.05 microcurie (μCi) (1.85 kilobecquerels (kBq)), or less, of hydrogen-3, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or *in vitro* clinical or *in vitro* laboratory testing; and

(B) 0.05 μCi (1.85 kBq), or less, of hydrogen-3, carbon-14, or iodine-125, per gram of animal tissue, averaged over the weight of the entire animal.

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

(4) Any licensee may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (31 TAC Chapter 330), unless such licensed material also contains hazardous waste, as defined in Section 3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5)-(9) (No change.)

(ggg) Appendices.

(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) (No change.)

(B) Occupational values.

(i) (No change.)

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 Sv), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 Sv) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 Sv). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii)-(xii) (No change.)

(C) Effluent concentrations.

(i) The columns in Table II of subparagraph (F) of this paragraph captioned "Effluents," "Air," and "Water" are

applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of subsection (o) of this section. The concentration values given in Columns 1 and 2 of Table II of subparagraph (F) of this paragraph are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 mSv).

(ii) (No change.)

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9, relating the inhalation ALI to the DAC, as explained in subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) a factor of 50 to relate the 5 rems (0.05 Sv) annual occupational dose limit to the 0.1 rem limit for members of the public;

(II)-(III) (No change.)

(iv) (No change.)

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7. The factor of 7.3×10^7 milliliters (ml) includes the following components:

(I)-(II) (No change.)

(vi) (No change.)

(D)-(F) (No change.)

(3) (No change.)

(4) Classification and characteristics of low-level radioactive waste (LLRW).

(A) Classification of radioactive waste for land disposal.

(i) Considerations. Determination of the classification of LLRW involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(ii) Classes of waste.

(I) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in subparagraph (B)(i) of this paragraph. If Class A waste also meets the stability requirements set forth in subparagraph (B)(ii) of this paragraph, it is not necessary to segregate the waste for disposal.

(II) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(III) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) If the concentration does not exceed 0.1 times the value in subclause (V) of this clause, the waste is Class A.

(II) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in subclause (V) of this clause, the waste is Class C.

(III) If the concentration exceeds the value in subclause (V) of this clause, the waste is not generally acceptable for land disposal.

(IV) For wastes containing mixtures of radionuclides listed in subclause (V) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(V) Classification table for long-lived radionuclides.

Figure 10: 25 TAC §289.202(ggg)(4)(A)(iii)(V)

(iv) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in clause (iii)(V) of this subparagraph, classification shall be determined based on the concentrations shown in subclause (VI) of this clause. However, as specified in clause (vi) of this subparagraph, if radioactive waste does not contain any nuclides listed in either clause (iii)(V) of this subparagraph or subclause (VI) of this clause, it is Class A.

(I) If the concentration does not exceed the value in Column 1 of subclause (VI) of this clause, the waste is Class A.

(II) If the concentration exceeds the value in Column 1 of subclause (VI) of this clause but does not exceed the value in Column 2 of subclause (VI) of this clause, the waste is Class B.

(III) If the concentration exceeds the value in Column 2 of subclause (VI) of this clause but does not exceed the value in Column 3 of subclause (VI) of this clause, the waste is Class C.

(IV) If the concentration exceeds the value in Column 3 of subclause (VI) of this clause, the waste is not generally acceptable for near-surface disposal.

(V) For wastes containing mixtures of the radionuclides listed in subclause (VI) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(VI) Classification table for short-lived radionuclides.

Figure 11: 25 TAC §289.202(ggg)(4)(A)(iv)(VI)

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows:

(I) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph is less than 0.1 times the value listed in clause (iii)(V) of this subparagraph, the class shall be that determined by the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph.

(II) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph exceeds 0.1 times the value listed in clause (iii)(V) of this subparagraph, but does not exceed the value listed in clause (iii)(V) of this subparagraph, the waste shall be Class C, provided the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph does not exceed the value shown in Column 3 of clause (iv)(VI) of this subparagraph.

(vi) Classification of wastes with radionuclides other than those listed in clauses (iii)(V) and (iv)(VI) of this subparagraph. If the waste does not contain any radionuclides listed in either clauses (iii)(V) and (iv)(VI) of this subparagraph, it is Class A.

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 curies per cubic meter (Ci/m ^{3}) (1.85 terabecquerels per cubic meter (TBq/m ^{3})) and Cs-137 in a concentration of 22 Ci/m ^{3} (814 gigabecquerels per cubic meter (GBq/m ^{3})). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors, which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocurie (becquerel) per gram.

(B) Radioactive waste characteristics.

(i) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(I) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of this section, the site license conditions shall govern.

(II) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(III) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(IV) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume.

(V) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(VI) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with subclause (VIII) of this clause.

(VII) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(VIII) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees Celsius. Total activity shall not exceed 100 Ci (3.7 terabecquerels (TBq)) per container.

(IX) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(ii) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(I) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(II) Notwithstanding the provisions in clause (i)(III) and

(IV) of this subparagraph, liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(III) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

(C) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with subparagraph (A) of this paragraph.

(5) Time requirements for record keeping.

Figure 12: 25 TAC §289.202(ggg)(5)

(6) Acceptable surface contamination levels.

Figure 13: 25 TAC §289.202(ggg)(6)

(7) Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section).
Figure 14: 25 TAC §289.202(ggg)(7)

(8) Soil contamination limits for selected radionuclides (for use in subsection

(ddd) of this section).
Figure 15: 25 TAC §289.202(ggg)(8)

(9) The following, TRC Form 21-2, is to be used to document cumulative occupational exposure history:
Figure 16: 25 TAC §289.202(ggg)(9)

(10) The following, TRC Form 21-3, is to be used to document occupational exposure record for a monitoring period:
Figure 17: 25 TAC §289.202(ggg)(10)

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General Counsel
Texas Department of Health
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License Regulations

25 TAC §289.252, §289.254

The amendments are adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.252. Licensing of Radioactive Material.

(a) Purpose. This section and §289.115 of this title (relating to Radiation Safety, Requirements and Licensing and Registration Procedures for Industrial Radiography), §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities) provide for the licensing of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific license issued in accordance with this section, or as otherwise provided in this section, in a specific license issued in accordance with §§289.115, 289.127, 289.254, or §289.260 of this title, or in a general license or general license acknowledgement issued in accordance with §289.251 of this title.

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material). Licensees engaged in industrial radiographic operations are subject to the requirements of §289.115 of this title; licensees using sealed sources in the healing arts are subject to the requirements of §289.256 of this title (relating to Use of Sealed Radioactive Sources in the Healing Arts); and licensees engaged in well logging service operations and tracer studies are subject to the requirements of §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(c) (No change.)

(d) Filing application for specific licenses.

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

(6) Each application for a specific license, other than a license exempted from §289.204 of this title, shall be accompanied by the fee prescribed in §289.204 of this title.

(7) Each application shall be accompanied by BRC Form 252-1.

(8) (No change.)

(9) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

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

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21 - 1.34 of this title (relating to the Texas Board of Health).

(e) (No change.)

(f) Special requirements for issuance of certain specific licenses for radioactive material by specific groups.

(1) (No change.)

(2) Specific licenses for medical uses of radioactive material.

(A) (No change.)

(B) Any licensee who is authorized to use one or more of the medical use groups of radioactive material in accordance with subparagraph (A) of this paragraph and subsection (w)(2) of this section is subject to the following conditions.

(i) For Groups I and II of subsection (w)(2) of this section, no licensee shall receive, possess, or use radioactive material except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(10) of this section or by the United States Nuclear Regulatory Commission (NRC), another agreement state, or a licensing state.

(ii) For Group III of subsection (w)(2) of this section, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material except those that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(11) of this section or a specific license issued by the NRC, an

agreement state, or a licensing state in accordance with equivalent regulations.

(iii) For Group III of subsection (w)(2) of this section, any licensee who uses generators or reagent kits shall:

(I) elute the generator or process radioactive material with the reagent kit in accordance with instructions that are approved by the agency, the NRC, an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit;

(II) (No change.)

(III) prohibit the administration to patients of technetium-99m containing more than 0.15 microcurie (μCi) of molybdenum-99 per millicurie (mCi) of technetium-99m; and

(IV) (No change.)

(C) (No change.)

(D) Any licensee who is licensed in accordance with subparagraph (A) of this paragraph for one or more of the medical use groups in subsection (w)(2) of this section is also authorized, subject to the provisions of this subparagraph and subparagraph (E) of this paragraph, to receive, possess, and use for calibration and reference standards:

(i) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with a half-life not longer than 100 days, in amounts not to exceed 15 mCi total;

(ii) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with half-life greater than 100 days in amounts not to exceed 200 μCi total;

(iii) technetium-99m in amounts as required for calibration and testing of laboratory instruments; and

(iv) any radioactive material, in amounts not to exceed 6 mCi per source, contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(7) of this section, a specific license issued by the NRC in accordance with 10 Code of Federal Regulations (CFR) 32.74, or a specific license issued to the manufacturer by an agreement state or a licensing state in accordance with equivalent regulations.

(E) Any licensee who possesses and uses calibration and reference sources in accordance with subparagraph (D)(iv) of this paragraph shall:

(i) follow the radiation safety and handling instructions approved by the agency, the NRC, an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source, and maintain such instruction in a legible and conveniently available form; and

(ii) conduct a physical inventory at intervals not to exceed six months to account for all sources received and possessed. Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, source identification numbers, location of sources, the date of the inventory, and the identification of the individual(s) making the record.

(F)-(G) (No change.)

(H) Any licensee who processes and prepares radiopharmaceuticals for human use shall do so according to:

(i) instructions that are approved by the agency, the NRC, an agreement state, or a licensing state that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit;

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

(I) If the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of three years.

(3) Release of patients containing radiopharmaceuticals, temporary implants, or permanent implants.

(A) Any individual to whom more than 30 mCi of a radiopharmaceutical is administered shall be confined to an agency-approved inpatient facility and shall not be released from confinement until the activity of the administered radiopharmaceutical in the patient is less than 30 mCi, or until the measured dose rate from the patient is less than five millirems per hour (mrem/hr) at a distance of one meter (m).

(B) (No change.)

(C) Any individual containing permanent implant sources shall remain hospitalized and shall not be released from confinement until the exposure rate from the patient is less than 5 milliroentgens per hour at a distance of 1 m from the implant location.

(4)-(6) (No change.)

(g) (No change.)

(h) Special requirements for a specific license to manufacture, assemble, repair, or commercially distribute commodities, products, or devices that contain radioactive material.

(1) (No change.)

(2) Commercial distribution of radioactive material in exempt quantities.

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

(C) The license issued in accordance with subparagraph (B) of this paragraph is subject to the following conditions.

(i) (No change.)

(ii) Each exempt quantity shall be separately and individually packaged. No more than ten such packaged exempt quantities shall be contained in any other package for commercial distribution to persons exempt from this chapter in accordance with §289.251(d)(2) of this title. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 mrem/hr.

(iii)-(iv) (No change.)

(D) (No change.)

(3) Incorporation of naturally occurring or accelerator-produced radioactive material (NARM) into gas and aerosol detectors. In addition to the requirements set forth in subsection (e) of this section, an application for a specific license authorizing the incorporation

of NARM into gas and aerosol detectors to be distributed to persons exempt from this chapter in accordance with §289.251(d)(3)(C) of this title will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26. The maximum quantity of radium-226 in each device shall not exceed 0.1 μCi.

(4) Licensing the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(j)(1) of this title.

(A) An application for a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with §289.251(g)(1)(C) and (j)(1) of this title or equivalent regulations of the NRC, an agreement state, or a licensing state will be approved if:

(i) (No change.)

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(I) (No change.)

(II) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one year a dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(III) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(-a-) (No change.)

(-b-) 200 rems to the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter (cm^2);

(-c-) (No change.)

(iii) each device bears a durable, legible, clearly visible label or labels approved by the agency, which contain in a clearly identified and separate statement:

(I)-(II) (No change.)

(III) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(-a-) For radioactive materials other than NARM, the following statement is appropriate:

Figure 1: 25 TAC §289.252(h)(4)(A)(iii)(III)(-a-)

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

(B) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to:

(i)-(x) (No change.)

(C) In the event the applicant desires that the general licensee in accordance with §289.251(g)(1)(C) and (j)(1) of this title or in accordance with equivalent regulations of the NRC, an agreement state, or a licensing state be authorized to mount the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of source holder mounting brackets, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated annual doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive an annual dose in excess of 10% of the limits specified in §289.202(f) of this title.

(D) Each person licensed in accordance with this subparagraph to commercially distribute devices to generally licensed persons shall:

(i) (No change.)

(ii) furnish a copy of the general license in the NRC's, agreement state's, or licensing state's regulation equivalent to §289.251(g)(1)(C) and (j)(1) of this title, or alternatively, furnish a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title to each person to whom the licensee directly or through an intermediate person commercially distributes radioactive material in a device for use in accordance with the general license of the NRC, the agreement state, or the licensing state. If a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the NRC, agreement state, or licensing state in accordance with requirements substantially the same as those in §289.251(g)(1)(C) and (j)(1) of this title;

(iii) (No change.)

(iv) report to the NRC all commercial distributions of such devices to persons for use in accordance with the NRC general license in 10 CFR 31.5;

(v)-(vi) (No change.)

(vii) report to the NRC information indicating no commercial distributions have been made to the NRC licensees during the reporting period if no such commercial distributions have been made; and

(viii) keep records showing the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(g)(1)(C) and (j)(1) of this title, or equivalent regulations of the NRC, an agreement state, or a licensing state. The records should show the date of each commercial distribution, the isotope and the quantity of radioactivity in each device commercially distributed, the identity of any intermediate person, and compliance with the reporting requirements of this subparagraph.

(5)-(6) (No change.)

(7) Manufacture and commercial distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and commercially distribute sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section for use as a calibration or reference source will be approved if:

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

(C) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section or equivalent licenses of the NRC, an agreement state, or a licensing state, provided that such labeling for sources that do not require long-term storage may be on a leaflet or brochure that accompanies the source;

(D)-(E) (No change.)

(8) Manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. An application for a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(j)(2) of this title will be approved if:

(A) (No change.)

(B) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 10 μCi each;

(ii) iodine-131 in units not exceeding 10 μCi each;

(iii) carbon-14 in units not exceeding 10 μCi each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 μCi each;

(v) iron-59 in units not exceeding 20 μCi each;

(vi) cobalt-57 in units not exceeding 10 μCi each;

(vii) selenium-75 in units not exceeding 10 μCi each; or

(viii) mock iodine-125 in units not exceeding 0.05 μCi of iodine-129 and 0.005 μCi of americium-241 each;

(C) each prepackaged unit bears a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 μCi of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 μCi of hydrogen-3 (tritium); 20 μCi of iron-59; or mock iodine-125 in units not exceeding 0.05 μCi of iodine-129 and 0.005 μCi of americium-241; and

(ii) displaying the radiation caution symbol in accordance with §289.202(ee)(1) and (ee)(2) of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(D) one of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(i) option 1:

Figure 3: 25 TAC §289.252(h)(8)(D)(i)

(ii) (No change.)

(E) the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements of §289.202(ff)of this title.

(9)-(10) (No change.)

(11) Manufacture and commercial distribution of generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material.

(A) An application for a specific license to manufacture and commercially distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed in accordance with subsection (f)(2) of this section for the medical uses listed in Group III defined in subsection (w)(2) of this section will be approved if:

(i)-(iv) (No change.)

(v) the label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit contains:

(I) (No change.)

(II) a statement that this generator or reagent kit (as appropriate) is approved for use by persons licensed by the agency in accordance with subsection (f)(2) of this section and for the medical uses listed in Group III defined in subsection (w)(2) of this section or in accordance with equivalent licenses of the NRC, an agreement state, or a licensing state.

(B) (No change.)

(12) Manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(A) An application for a specific license to manufacture products and devices containing depleted uranium for use in accordance with §289.251(f)(5) of this title or equivalent regulations of the NRC or an agreement state, will be approved if:

(i) (No change.)

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the product or device to provide reasonable assurance that possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one year a radiation dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(iii) (No change.)

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

(D) Each person licensed in accordance with subparagraph (A) of this paragraph shall:

(i) (No change.)

(ii) label or mark each unit to:

(I) (No change.)

(II) state that the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the regulations of the NRC or of an agreement state;

(iii) (No change.)

(iv) furnish a copy of the general license in:

(I) (No change.)

(II) the NRC's or agreement state's regulation equivalent to the general license in §289.251(f)(5) of this title and a copy of the NRC's or agreement state's certificate, or alternatively, furnish a copy of the general license in §289.251(f)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license of the NRC or an agreement state;

(v) (No change.)

(vi) report to the NRC and each responsible agreement state agency all commercial distributions of industrial products or devices to persons for use in accordance with the general license in the NRC's or agreement state's equivalent rule to §289.251(f)(5) of this title. Such report shall meet the provisions of clause (v) of this subparagraph; and

(vii) keep records showing the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(5) of this title or equivalent regulations of the NRC or of an agreement state. The records shall be maintained for a period of two years and shall show the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(13)-(14) (No change.)

(i) Sealed source or device evaluation. No sealed source or device containing radioactive material shall be authorized on a specific license or general license until radiation safety information for that sealed source or device has been evaluated by the agency, the NRC, another agreement state, or a licensing state.

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

(j) Issuance of specific licenses.

(1) Upon a determination that an application meets the requirements of the Texas Radiation Control Act (Act) and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) (No change.)

(k) (No change.)

(l) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

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

(4) If a licensee does not submit an application for license renewal in accordance with subsection (m) of this section, the licensee shall on or before the expiration date specified in the license:

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

(C) submit a record of disposal of radioactive material and radiation survey(s) of the licensee's permanent location(s) of use and/or storage. Levels of radiation shall be reported in units as required by §289.202(ddd) and (eee) of this title. The survey or measurement instrument(s) used for conducting the survey shall be specified; and

(D) pay any outstanding fees in accordance with §289.204 of this title and resolve any outstanding notices of violations of this chapter or of license conditions.

(5) (No change.)

(6) If radiation levels or radioactive material in excess of the limits of §289.202(ddd) and/or (eee) of this title are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of paragraph (13) of this subsection. In addition to the information submitted in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan, if appropriate, for decontaminating the location(s).

(7) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(ddd) and/or (eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (10) of this subsection, and begin decommissioning upon approval of that plan:

(A) the license has expired in accordance with subsection (l) of this section or subsection (q)(3) of this section; or

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b)(70) of this title, at the entire site or in any separate building or outdoor area; or

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(ddd) and/or (eee) of this title.

(8) Coincident with the notification required by paragraph (7) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (u) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (13)(D) of this subsection.

(A) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so by (the effective date of this section).

(B) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the agency.

(9) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines

that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with paragraph (7) of this subsection. The schedule for decommissioning set forth in paragraph (7) of this subsection may not commence until the agency has made a determination on the request.

(10) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(11) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (7) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(12) The procedures listed in paragraph (10) of this subsection may not be carried out prior to approval of the decommissioning plan.

(13) The proposed decommissioning plan for the site or separate building or outdoor area must include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(14) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(15) Except as provided in paragraph (17) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(16) Except as provided in paragraph (17) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(17) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors which the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(18) As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall do the following, as appropriate:

(i) report levels of gamma radiation in units of millisieverts per hour (mSv/hr) (microroentgen per hour (μR/hr)) at 1 m from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (MBq) (disintegrations per minute (dpm) or μCi) per 100 cm^2 removable and fixed for surfaces, MBq (μCi) per milliliter (ml) for water, and becquerels (Bq) (picocuries (pCi)) per gram (g) for solids such as soils or concrete; and

(ii) specify the make and model number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(19) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(C) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with §289.202(ddd) and/or (eee) of this title or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with §289.202 (ddd) and/or (eee) of this title.

(20) If the licensee does not submit an application for license renewal in accordance with subsection (m) of this section, in addition to the information required in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the agency and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(21) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan by the agency.

(22) The proposed decommissioning plan, if required by paragraph (20) of this subsection or by license condition, must include:

(A) a description of planned decommissioning activities;

(B) a description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) a description of the planned final radiation survey; and

(D) an updated, detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(23) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(24) Upon approval of the decommissioning plan by the agency, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (4)(C) of this subsection.

(25) If the information submitted in accordance with paragraphs (4)(C) or (24) of this subsection does not adequately demonstrate that the premises are suitable for release for unrestricted use, the agency will inform the license of the appropriate further actions required for termination of license.

(26) Each licensee who possesses residual radioactive material in accordance with paragraph (6) of this subsection, following the expiration date specified in the license, shall:

(A) be limited to actions, involving radioactive material, related to preparing the location(s) for release for unrestricted use; and

(B) continue to control entry to restricted areas until the location(s) are suitable for release for unrestricted use and the agency notifies the licensee in writing that the license is terminated.

(27) Each licensee shall submit to the agency all records required by §289.202(nn)(2) of this title before the license is terminated.

(m) Renewal of license.

(1) (No change.)

(2) In any case in which a licensee, not less than 30 days prior to expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency. In any case in which a licensee, not more than 90 days after the expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency.

(n)-(o) (No change.)

(p) Transfer of material.

(1) (No change.)

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

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

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the NRC, any agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the Federal government or any agency thereof, the agency, any agreement state, or any licensing state; or

(E) (No change.)

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, or a licensing state, or to a general licensee who is required to register with the agency, the NRC, an agreement state, or a licensing state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

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

(D) The transferor may obtain other sources of information compiled by a reporting service from official records of

the agency, the NRC, or the licensing agency of an agreement state or a licensing state as to the identity of licensees and the scope and expiration dates of licenses and registrations.

(E) When none of the methods of verification described in subparagraphs (A)-(D) of this paragraph are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the NRC, or the licensing agency of an agreement state or a licensing state that the transferee is licensed to receive the radioactive material.

(5) (No change.)

(q) Modification and revocation of licenses.

(1) (No change.)

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required in accordance with provisions of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an original application, or for violation of, or failure to observe applicable terms and conditions of the Act, this chapter, or of the license, or order of the agency.

(3) Each specific license revoked by the agency expires at the end of the day on the date of the agency's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(r) Notification of incidents.

(1) Immediate report. Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(2) Twenty-four hour report. Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

(i) (No change.)

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in §289.202(ggg)(2) of this title for the material; and

(iii) (No change.)

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

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in §289.202(ggg)(2) of this title for the material; and

(ii) (No change.)

(3) (No change.)

(s) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within the state of Texas provided that:

(A) (No change.)

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i)-(v) (No change.)

(vi) an annual fee as specified in §289.204(e)(7) of this title.

(C)-(D) (No change.)

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section except by transfer to a person:

(i) specifically licensed by the agency, the NRC, another agreement state, or another licensing state to receive such material, or

(ii) (No change.)

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the NRC, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service a device described in §289.251 (g)(1)(C) and (j)(1) of this title, within areas subject to the jurisdiction of the licensing body, is hereby granted a general license to install, transfer, demonstrate, or service such a device in the state of Texas provided that:

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

(3) (No change.)

(t) Preparation of radioactive material for transport. Requirements for the preparation of radioactive material for transport are specified in §289.257 of this title.

(u) Financial assurance and record keeping for decommissioning.

(1) (No change.)

(2) The applicant for each specific license authorizing possession and use of radioactive material of half-life greater than 120

days and in quantities specified in paragraph (4) of this subsection shall either:

(A) (No change.)

(B) submit a certification that financial assurance for decommissioning has been provided in the amount in accordance with paragraph (4) of this subsection using one of the methods described in paragraph (6) of this subsection. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection shall be submitted to the agency before receipt of licensed material. If the applicant does not defer execution of the financial instrument, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection is to be submitted to the agency.

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

(5) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection.

(6) Financial assurance for decommissioning must be provided by one or more of the following methods.

(A) (No change.)

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (w)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (w)(7) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

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

(C)-(D) (No change.)

(7) Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) (No change.)

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(ii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection. This assurance shall be submitted when this section becomes effective March 1, 1998.

(v) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (w)(4) of this section must contain either:

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

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

(w) Appendices.

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

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) (No change.)

(B) Financial test.

(i) To pass the financial test, the parent company must meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company must have:

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

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used.)

(II) The parent company must have:

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

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

(ii)-(iv) (No change.)

(C) (No change.)

(4) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. Figure 5: 25 TAC §289.252(w)(4)

(5) Acceptable training and experience for medical uses of radioactive material.

(A) Training for uptake, dilution, and excretion studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical listed in Group I of subsection (w)(2) of this section, to be a physician who:

(I) (No change.)

(II) has successfully completed classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals and supervised clinical experience as follows:

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

(-c-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the Council on Postdoctoral Training of the American Osteopathic Association (COPT-AOA) and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

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

(B) Training for imaging and localization studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit listed in Groups II and III of paragraph (2)(B) and (C) of this subsection, to be a physician who:

(I) (No change.)

(II) has successfully completed classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

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

(-d-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or the COPT-AOA and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

(ii) (No change.)

(iii) Classroom and laboratory training identified in clause (i)(II)(-a-) of this subparagraph that was initiated before October 1, 1995, and completed by October 1, 1997, will be accepted if it is obtained in an accredited medical school, a federal teaching hospital, or a training program for medical use of radioactive material that has been accepted by the agency, NRC, or another agreement state.

(iv) (No change.)

(C) Training for the therapeutic use of radiopharmaceuticals.

(i) The licensee shall require the authorized user of radiopharmaceuticals for therapeutic use to be a physician who:

(I) (No change.)

(II) has classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals and supervised clinical experience as follows:

(-a-) (No change.)

(-b-) supervised clinical experience under the supervision of an authorized physician user for the type of therapy authorization requested from the following list:

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

(-7-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or the COPT-AOA and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in this subclause.

(ii) (No change.)

(D) Training for use of brachytherapy sources (except for beta applicators - See subparagraph (E) of this paragraph).

(i) The licensee shall require the authorized user of a brachytherapy source to be a physician who:

(I) (No change.)

(II) is in the active practice of therapeutic radiology, has had classroom training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, and supervised clinical experience as follows:

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

(ii) (No change.)

(E) (No change.)

(F) Training for use of sealed sources for diagnosis.

(i) The licensee shall require the authorized user of a sealed source in the devices listed in clause (ii) of this subparagraph, to be a physician, dentist, or podiatrist who:

(I) (No change.)

(II) has had eight hours of classroom and laboratory training in radioisotope handling techniques specifically applicable to the use of the device that includes:

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

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

(G) Training for teletherapy.

(i) The licensee shall require the authorized user of a sealed source in a teletherapy unit to be a physician who:

(I) (No change.)

(II) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

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

(ii) (No change.)

(H) Training for experienced authorized users. Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a NRC or agreement state license issued before September 1, 1993, and those issued by the agency before October 1, 1995, who perform only those methods of use for which they were authorized on that date need not comply with the training requirements in this paragraph.

(I) Recentness of training.

(i)-(ii) (No change.)

(6) (No change.)

(7) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self guarantee.

(B) Financial test.

(i) To pass the financial test, a company must meet all of the following criteria:

(I) tangible net worth at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self guaranteeing licensee and as parent-guarantor);

(II) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and

(III) a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.

(ii) To pass the financial test, a company must meet all of the following additional requirements:

(I) the company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(II) the company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(III) after the initial financial test, the company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iii) If the licensee no longer meets the requirements of clause (i) of this subparagraph, the licensee must send immediate notice to the agency of its intent to establish alternate financial assurance as specified in the NRC's regulations within 120 days of such notice.

(C) Company self guarantee. The terms of a self guarantee which an applicant or licensee furnishes must provide that:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt;

(ii) the licensee shall provide alternate financial assurance as specified in the agency's regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee;

(iv) the licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission in accordance with the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

§289.254. Licensing of Radioactive Waste Processing And Storage Facilities.

(a) Purpose and scope.

(1) (No change.)

(2) Except as otherwise provided, this section applies to all persons who transport, receive, possess, store, or process radioactive waste from other persons. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and

Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Commencement of major construction - Any major structural erection or major alterations to existing structures, or other substantial action that would change the facility design or site for the purpose of establishing a radioactive waste processing or storage facility. The term does not mean the acquisition of existing structures or minor changes thereto.

(2) Decommissioning - The final activities carried out at a radioactive waste processing or storage site after completion of processing operations to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and/or termination of the license. Such activities shall include:

(A) disposing of all radioactive waste at a licensed radioactive waste disposal site;

(B) dismantling or decontaminating site structures;

(C) decontaminating site surfaces and remaining equipment; and

(D) conducting final closure surveys, decontamination, and reclamation of the site.

(3) Disposal - Isolation or removal of radioactive wastes from mankind and his environment. The term does not include emissions and discharges under rules of the agency.

(4) Engineered barriers - Man-made devices to contain or limit the potential movement of radioactive material, which might result from spills or other accidents.

(5) Floodplain - The lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of off-shore islands.

(6) Local government - A county, an incorporated city or town, a special district, or other political subdivision of the state.

(7) Major aquifer - An aquifer which yields large quantities of water in a comparatively large area of the state. Major aquifers are located in the following formations: Ogallala, Alluvium and Bolsom Deposits, Edwards-Trinity (Plateau), Edwards (Balcones Fault Zone - San Antonio Region), Edwards (Balcones Fault Zone - Austin Region), Trinity Group, Carrizo-Wilcox, and Gulf Coast.

(8) Natural barriers - The natural characteristics of a site or surface and subsurface composition that serves to impede the movement of radioactive material. Natural barriers may include, for example, the location of a facility remote from an aquifer, or the sorptive capability of the soil surrounding a facility.

(9) Person affected - A person:

(A) who is a resident of a county, or a county adjacent to the county, in which radioactive materials subject to the Texas Radiation Control Act (Act) are/or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and

(B) who shall demonstrate that he has suffered or will suffer actual injury or economic damage.

(10) Processing - The storage, extraction of materials, transfer, volume reduction, compaction, incineration, solidification, or other separation and preparation of radioactive waste from other persons for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(11) Radioactive waste processing facility - A facility where radioactive waste received from other persons is processed and repackaged according to United States Department of Transportation (DOT) regulations.

(12) Radioactive waste storage facility - A facility where radioactive waste received from other persons and packaged according to DOT regulations is stored while awaiting shipment to a licensed radioactive waste processing or disposal facility.

(13) Reconnaissance level information - Any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance level information includes, but is not limited to, relevant published scientific literature; drilling records required by state agencies, such as the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission (Commission), and the Texas Natural Resources Information System; and reports of governmental agencies.

(14) Site - The real property, including the buffer zone, on which a radioactive waste processing or storage facility may be located.

(15) Site monitoring - The procedures for the monitoring of the site and environment to assess quality of site operations and performance and to detect and quantify levels and types of radioactivity and chemicals in the environment. It includes preoperational, operational, and license termination phases.

(16) Site operations - The routine day-to-day activities carried out at the site for the receipt, processing, and storage of radioactive waste.

(17) Site suitability - The capability of the various characteristics of a processing or storage facility or site to safely contain the radioactive waste expected to be present at the site.

(18) Sole source aquifer - The aquifer which is the sole or principal source of drinking water for an area designated under the Safe Drinking Water Act of 1974, 42 United States Codes Annotated 300f, et seq.

(19) Waste processing and storage categories - Radionuclides classified as follows:

(A) Any one of seven groups into which radionuclides in normal form are classified, according to their toxicity and their relative potential hazard in transport, as specified in subsection (x) of this section.

(B) Any radionuclide not specifically listed in one of the categories in subsection (x) of this section shall be assigned to one of the categories in accordance with subsection (x)(2) of this section.

(20) Wetlands - Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to

support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(c) Activities requiring license. Except for persons exempted by this section, no person shall receive, possess, and store or process radioactive waste from another person except as authorized in a specific license issued in accordance with this section.

(d) Radioactive waste processing and storage facility classification.

(1) Classification of radioactive waste processing and storage facilities. Radioactive waste processing and storage facilities are classified according to the radionuclides, other than sealed sources, received, possessed, or processed in each of the waste processing and storage categories, as defined in subsection (b) of this section with all applicable provisions, except that, for the purposes of this section which apply to processing and storage of radioactive waste, Category IV shall include waste processing and storage categories IV-VII. The total possession limit of each category of unsealed (dispersible) radionuclides for each class of facility is as follows:
Figure 1: 25 TAC§289.254(d)(1)

(2) Class III storage facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of class II storage facilities.

(3) Class III processing facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of class II processing facilities.

(e) Exemptions.

(1) (No change.)

(2) Unsealed sources.

(A) Persons who receive, possess, or process sources of radioactive material in unsealed form as radioactive waste from other persons are exempt from this section, provided that:

(i) the total radioactivity of all radioactive waste possessed at any one time does not exceed the applicable limits for class I processing or storage facilities as described in subsection (d) of this section; and

(ii) (No change.)

(B) (No change.)

(3) (No change.)

(f) Filing application for specific license.

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

(7) Applications or documents submitted to the agency in connection with licensing actions shall be made available for public inspection in accordance with provisions of the Texas Public Information Act, Government Code, Chapter 552. If the application contains information of the type described in the Texas Public Information Act which, the applicant wishes withheld from public disclosure, such information shall be submitted with the application under separate cover, along with a justification for withholding the information.

(8)-(10) (No change.)

(11) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

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

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §1.21-1.34 of this title (relating to the Texas Board of Health).

(g) Application requirements. An applicant for a license under this section shall include the following information in the application to the agency:

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

(15) for radioactive waste processing facilities, a description of the equipment to be installed to maintain control over maximum concentrations of radioactive materials in gaseous and liquid effluents produced during normal operations and the means to be employed for keeping levels of radioactive material in effluents to unrestricted areas as low as reasonably achievable and within the limits listed in §289.202 of this title; and

(16) (No change.)

(h) Financial assurance and record keeping for decommissioning.

(1) (No change.)

(2) The applicant for each specific license authorizing receipt, possession, transport, storage, and processing of radioactive waste from other persons with a half-life greater than 120 days and in quantities specified in paragraph (4) of this subsection shall either:

(A) (No change.)

(B) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (4) of this subsection using one of the methods described in paragraph (6) of this subsection. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of radioactive waste. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection shall be submitted to the agency before receipt of radioactive waste. If the applicant does not defer execution of the financial instrument, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection is to be submitted to the agency.

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

(5) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection.

(6) Financial assurance for decommissioning must be provided by one or more of the following methods.

(A) (No change.)

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in §289.252(w)(3) of this title. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in §289.252(w)(7) of this title. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

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

(C)-(D) (No change.)

(7) Each person licensed under this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive waste is processed and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(ii) all areas outside of restricted areas where current and previous wastes have been buried as documented under §289.202(tt) of this title; and

(D) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection. This assurance shall be submitted when this section becomes effective March 1, 1998.

(i) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license authorizing the receipt, possession, transport, storage, and processing of radioactive waste from other persons in excess of the quantities in §289.252(w)(4) of this title must contain either:

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

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

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

(3) An emergency plan for responding to a release of radioactive waste submitted in accordance with paragraph (1)(B) of this subsection must include the following information:

(A)-(M) (No change.)

(4) (No change.)

(j) Additional environmental requirements for class III facilities. An application for a license for a class III processing or storage facility shall include environmental information which may be based on reconnaissance level information when appropriate and addresses the following:

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

(k)-(m) (No change.)

(n) Specific terms and conditions to license.

(1) Each license issued in accordance with this section shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations, and orders of the agency.

(2) No license issued or granted under this section and no right to possess or utilize radioactive material granted by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine his use and possession of the material licensed to the locations and purposes authorized in the license.

(4)-(6) (No change.)

(o)-(s) (No change.)

(t) Site suitability criteria. The following requirements specify the characteristics which a new site must have to be acceptable for licensure.

(1) (No change.)

(2) No new site shall be located in a 100-year floodplain, as designated by the Commission, or a wetland.

(3) (No change.)

(u) Minimum criteria for facility design and operation.

(1) (No change.)

(2) The design and operation of the radioactive waste processing or storage facility shall be such that:

(A) (No change.)

(B) radiation levels, concentrations, and potential exposures off-site due to airborne releases during operations are within the limits established in §289.202 of this title and are maintained as low as reasonably achievable.

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

(5) The location and construction of any new radioactive waste processing facility shall have a buffer zone adequate to permit emergency measures to be implemented following accidents and to address airborne plume dispersions and, as a minimum, shall be such that:

(A) the active components of a class II facility are located at least 30 meters from the nearest residence as of the date of the license application; and

(B) the active components of a class III facility are located at least 30 meters from the nearest property not owned or occupied by the licensee.

(v) Waste processing and packaging requirements. All processed radioactive waste offered for transport or disposal must meet:

(1) all applicable transportation requirements of the agency, the United States Nuclear Regulatory Commission, and of the DOT; and

(2) (No change.)

(w) Environmental assessment. A written analysis of the impact on the human environment will be prepared or secured by the agency for any license for a class III processing or storage facility and shall be available to the public for written comment at least 30 days prior to the beginning of a hearing, if any, on the issuance or renewal of the license.

(x) Waste processing and storage categories of radionuclides.

(1) The following table contains waste processing and storage categories of radionuclides.
Figure 2: 25 TAC §289.254(x)(1)

(2) Any radionuclide not specifically listed in paragraph (1) of this section shall be assigned to one of the categories in accordance with the following table.
Figure 3: 25 TAC §289.254(x)(2)

(3) For mixtures of radionuclides, the following shall apply:

(A) If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all categories present, of the ratio between the total activity for each category to the permissible activity for each category will not be greater than unity.

(B) If the categories of the radionuclides are known but the amount in each category cannot be reasonably determined, the mixture shall be assigned to the most restrictive category present.

(C) If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive category which cannot be positively excluded.

(D) Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The category and activity shall be that of the first member present in the chain, except that if radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during processing, the waste processing and storage category shall be that of nuclide "X" and the activity of the mixture shall be the maximum activity of nuclide "X" during processing.

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License Regulations

25 TAC §289.257

The Texas Department of Health (department), by majority vote of the Texas Board of Health (board) on January 16, 1998, enters this order finally adopting new §289.257, concerning the packaging and transportation of radioactive material, including radioactive waste, with changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9839), as a result of comments received during the 30-day comment period.

Specifically, the section defines terms that are used in the packaging and interstate transport of radioactive material and establishes minimum requirements for packaging and transport of radioactive material, related records, special modes of transportation, and the use of a uniform waste manifest. These requirements are similar to the packaging and transportation requirements of the United States Department of Transportation and are items of compatibility with the United States Nuclear Regulatory Commission. As an agreement state, Texas must adopt the items of compatibility. For shipments of low-level radioactive waste (LLRW), the section establishes requirements for emergency plans, quality control plans, inspections of LLRW shipments, and fees for shipments of LLRW. These requirements are specified in Health and Safety Code, Chapters 401 and 402. The fee of $10 per cubic foot of shipped LLRW is to be assessed on shipments to a Texas LLRW disposal facility

and is therefore contingent upon the licensure, construction, and operation of a Texas LLRW disposal facility.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §289.257(d), the department added a definition for "industrial packaging" to provide additional information concerning industrial packaging of radioactive material. Change is reflected in §289.257(d)(18).

Change: Concerning §289.257(d)(19)(A)(iv), the department deleted the word "bulk" to more accurately reflect the definition in accordance with the United States Department of Transportation (DOT) 49 Code of Federal Regulations (CFR) 173.403. Change is reflected in §289.257(d)(20)(A)(iv).

Change: Concerning §289.257(d)(19)(C)(i), the department deleted the words "essentially uniformly" in the first line of the definition since this language was redundant. Change is reflected in §289.257(d)(20)(C)(i).

Change: Concerning §289.257(d)(25), the department added the phrase "service equipment for filling, emptying, venting, and pressure relief," prior to the words "and devices" to the definition of "packaging" to more accurately reflect the definition in accordance with DOT's 49 CFR 173.403. Change is reflected in §289.257(d)(26).

Change: Concerning §289.257(d)(28), the department added a sentence "This definition applies only to shipments of LLRW shipped to the Texas LLRW disposal facility." to clarify the applicability of the definition. Change is reflected in §289.257(d)(29).

Change: Concerning §289.257(d)(29), the department deleted the definition of "shipping paper" because this term was redundant of the definition in §289.257(d)(33).

Change: Concerning §289.257(d)(33), the department revised the definition to read "BRC Forms 540, 540A, 541, 541A, 542, and 542A - Official agency forms referenced in subsection (s)(5) of this section which includes the information required by DOT in 49 CFR Part 172. BRC Form 541B contains additional information for LLRW shipments to the Texas LLRW disposal facility." to incorporate deleted text from §289.257(d)(29) and clarify the intent of BRC Form 541B.

Change: Concerning §289.257(f), the department added §289.257(f)(5) "Licensed material discarded in accordance with §289.202(fff) of this title is exempt from all requirements of this section" to provide an exemption for materials that are addressed in another section of this chapter.

Change: Concerning §289.257(g)(2)(A) and (B), the department corrected the reference "subsection (a) of this section" to read "paragraph (1) of this subsection" to state the correct reference.

Change: Concerning §289.257(m)(2), the department revised the sentence to read "Advance notification....of radioactive waste when the following three conditions are met:" to prevent the perception that all radioactive waste must be carried in a Type B container.

Change: Concerning §289.257(s)(5)(A), the department added the phrase "or their equivalent" to the end of the first sentence to clarify allowing the use of the waste manifest forms of choice. The department also changed "TRC Form" to "BRC Form" to state the correct applicable form.

Change: Concerning the entire section, the department changed "TRC Form" to "BRC Form" to state the correct applicable form.

The following comments were received concerning the proposed section. Following each comment is the department's response and any resulting change(s). Other minor editorial changes were made for clarification purposes.

Comment. Concerning the section in general, the commenter stated that the phrase "this subsection" is vague when reading the proposed rules. It is impossible to tell which parts of the rules are being referred to when the phrase is used without referring to the subsection by number and number designation.

Response. The department responds that for rule publication, the *Texas Register Form and Style Manual* requires the phrase "this subsection" when referencing the section throughout the text. No change was made as a result of the comment.

Comment. Concerning §289.257(d), one commenter suggested that a statement be added to clarify that shipment of industrial packagings for low specific activity materials will be permitted.

Response. The department agrees and added a definition for "industrial packaging".

Comment. Concerning §289.257(f)(2)(C), one commenter stated that language equivalent to 10 Code of Federal Regulations (CFR) 71.10(b)(3) needed to be added to meet NRC compatibility requirements.

Response. The department agrees and has added the equivalent 10 CFR 71.10(b)(3) language to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.257(g), one commenter questioned the department's general license requirement for a "quality assurance program approval" from the NRC. The commenter has received information stating that the NRC has terminated its quality assurance program.

Response. The department responds that in accordance with 10 CFR 71.101(g), a program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 10 CFR 34.31(b) or equivalent agreement state requirments, is deemed to satisfy the requirements of 10 CFR 71.12(b) and 71.101(b). No change was made as a result of the comment.

Comment. Concerning §289.257(g)(2)(B)(i), one commenter noted that the date "April 1, 1996" should be "April 1, 1999" as an item of compatibility.

Response. The department agrees and has changed the incorrect date to "April 1, 1999" to comply with NRC compatibility requirements because as an agreement state, Texas must adopt this section as comparable to NRC's regulations.

Comment. Concerning §289.257(o), one commenter asked if it is necessary that Texas inspect every shipment of waste to a low level waste disposal site.

Response. The department responds that the Texas Low-Level Radioactive Waste Disposal Authority Act, Chapter 402, Health and Safety Code, §402.221(b) states that an inspector employed by the department shall inspect all packaged radioactive

waste before it is transported to a permanent disposal site in this state. No change was made as a result of the comment.

Comment. Concerning §289.257(r), one commenter questioned the $10 per cubic foot charge for waste shipped to the proposed Texas LLRW disposal facility. The commenter states that the department can not justify charging that kind of fee to send an inspector to the generator's site to look at the load and review the paperwork.

Response. The department responds that the Texas Radiation Control Act, Chapter 401, Health and Safety Code, §401.052(b)(5) states that the department shall assess a fee on shippers for shipments to a Texas LLRW disposal facility of radioactive waste originating in Texas and out-of-state. The department has assessed a $10 per cubic foot of shipped radioactive waste fee in order to establish the $500,000 maximum contribution to the radiation and perpetual care fund from shipment of radioactive waste to the Texas LLRW disposal facility.

Commenters included a representative from Chevron Research and Technology Co., the United States Nuclear Regulatory Commission, Frank Malek and Associates, and Gammatron. The commenters were generally in favor of the proposal; however, they presented comments and suggestions for changes to the proposal as previously discussed.

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the board with authority to adopt rules and guidelines relating to the control of radiation; under the Health and Safety Code, Chapter 402, which provides the board with authority to adopt rules and guidelines relating to the packaging of radioactive waste; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.257. Packaging and Transportation of Radioactive Material.

(a) Purpose.

(1) This section establishes requirements for packaging, preparation for shipment, and transportation of radioactive material including radioactive waste.

(2) The packaging and transport of radioactive material are also subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities) and to the regulations of other agencies (e.g., the United States Department of Transportation (DOT) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this section are in addition to, and not in substitution for, other requirements.

(b) Scope.

(1) The requirements in this section apply to any licensee authorized by a specific or general license issued by the agency to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the agency license, or transports that material on public highways. No provision of this section authorizes possession of radioactive material.

(2) Exemptions from the requirements for a license in subsection (c) of this section are specified in subsection (f) of this section. The general license in subsection (g) of this section requires that a United States Nuclear Regulatory Commission (NRC) certificate of compliance or other package approval be issued for the package to be used under the general license. The transport of radioactive material or delivery of radioactive material to a carrier for transport is subject to the operating controls and procedural requirements of subsections (h)-(m) of this section and to the general provisions of subsections (a)-(e) of this section, including DOT regulations referenced in subsection (e) of this section.

(c) Requirement for license. Except as authorized in a general or specific license issued by the agency, or as exempted in this section, no licensee may transport radioactive material or deliver radioactive material to a carrier for transport.

(d) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) A_1 - The maximum activity of special form radioactive material permitted in a Type A package.

(2) A_2 - The maximum activity of radioactive material, other than special form, low specific activity (LSA) and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in subsection (s)(2) of this section, or may be derived in accordance with the procedure prescribed in subsection (s)(1) of this section.

(3) Authority - The Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA).

(4) Carrier - A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(5) Certificate holder - A person who has been issued a certificate of compliance or other package approval by the agency.

(6) Chelating agent - Amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

(7) Chemical description - A description of the principal chemical characteristics of a low-level radioactive waste (LLRW).

(8) Consignee - The designated receiver of the shipment of low-level radioactive waste.

(9) Containment system - The assembly of components of the packaging intended to retain the radioactive material during transport.

(10) Conveyance - For transport on:

(A) public highway or rail by transport vehicle or large freight container;

(B) water by vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(C) aircraft.

(11) Decontamination facility - A facility operating under a NRC, agreement state, or agency license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for LLRW shipments.

(12) Disposal container - A transport container principally used to confine LLRW during disposal operations at a land disposal facility (also see definition for high integrity container). Note that for some shipments, the disposal container may be the transport package.

(13) Environmental Protection Agency (EPA) identification number - The number received by a transporter following application to the administrator of EPA as required by 40 Code of Federal Regulations (CFR) Part 263.

(14) Exclusive use - The sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(15) Fissile material - Plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Agency jurisdiction extends only to "special nuclear material in quantities not sufficient to form a critical mass" as defined in §289.201(b) of this title.

(16) Generator - A licensee operating under a NRC, agreement state, or agency license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(17) High integrity container (HIC) - A container commonly designed to meet the structural stability requirements of 10 CFR 61.56, and to meet DOT requirements for a Type A package.

(18) Industrial package (IP) - A packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of 49 CFR 173.410 and 173.411. Industrial packages are categorized in 49 CFR 173.411 as either:

(A) Industrial package Type 1 (IP-1);

(B) Industrial package Type 2 (IP-2); or

(C) Industrial package Type 3 (IP-3).

(19) Low-level radioactive waste (LLRW) - Waste containing radioactive material that:

(A) is acceptable for disposal in a LLRW disposal facility;

(B) is subject to the disposal criteria and concentration limits established by the agency or the commission;

(C) is discarded or unwanted and is not exempt by agency rule adopted under Section 401.106; and

(D) does not include:

(i) irradiated reactor fuel, high level radioactive waste, or spent nuclear fuel as defined by 10 CFR Part 61;

(ii) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes; or

(iii) NORM waste or oil and gas NORM waste.

(20) Low specific activity (LSA) material - Radioactive material with limited specific activity that satisfies the following descriptions and limits. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-6} A_2 per gram (A_2/g).

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Material in which the radioactive material is uniformly distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials) in which:

(i) the radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1 A_2; and

(iii) the average specific activity of the solid does not exceed 2 x 10^{-3} A_2/g.

(21) Low toxicity alpha emitters - Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

(22) Maximum normal operating pressure - The maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(23) Natural thorium - Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(24) Normal form radioactive material - Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(25) Package - The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package - A fissile material packaging together with its fissile material contents.

(B) Type A package - A packaging that, together with its radioactive contents limited to A_1or A_2as appropriate, meets the requirements of 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests set forth in 49 CFR 173.465 or 173.466, as appropriate.

(C) Type B package - A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa) (100 pounds per square inch (lb/in^2)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B.

(26) Packaging - The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, service equipment for filling, emptying, venting, and pressure relief, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(27) Physical description - The items called for on BRC Form 541 to describe a LLRW.

(28) Residual waste - LLRW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(29) Shipper - The licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers LLRW for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator. This definition applies only to shipments of LLRW shipped to the Texas LLRW disposal facility.

(30) Site of usage - The licensee's facility, including all buildings and structures between which radioactive material is transported and all roadways that are not within the public domain on which radioactive material can be transported.

(31) Specific activity of a radionuclide - The radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(32) Surface contaminated object (SCO) - A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO must be in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I: A solid object on which:

(i) the non-fixed contamination on the accessible surface averaged over 300 square centimeters (cm^2) (or the area of the surface if less than 300 cm^2) does not exceed 4 becquerels per square centimeter (Bq/cm ^{2}) (10^{-4} microcurie per square centimeter (μCi/cm^2)) for beta and gamma and low toxicity alpha emitters, or 4 x 10^{-1} Bq/cm^2 (10^{-5} μCi/cm^2) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4Bq/cm^2 (1 μCi/cm ^{2}) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2 (10^{-1} μCi/cm^2) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4 Bq/cm ^{2} (1 μCi/cm^2) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2 (10^{-1} μCi/cm^2) for all other alpha emitters.

(B) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which the following limits are not exceeded:

(i) the non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} μCi/cm^2) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} μCi/cm^2) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2(or the area of the surface if less than 300 cm^2) does not exceed 8 x 10^5 Bq/cm^2 (20 μCi/cm ^{2}) for beta and gamma and low toxicity alpha emitters, or 8 x 10^4 Bq/cm^2 (2 μCi/cm^2) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8 x 10^5 Bq/cm ^{2} (20 μCi/cm^2)for beta and gamma and low toxicity alpha emitters, or 8 x 10^4 Bq/cm^2 (2 μCi/cm^2) for all other alpha emitters.

(33) BRC Forms 540, 540A, 541, 541A, 542, and 542A - Official agency forms referenced in subsection (s)(5) of this section which includes the information required by DOT in 49 CFR Part 172. BRC Form 541B contains additional information for LLRW shipments to the Texas LLRW disposal facility. Licensees need not use originals of these forms as long as any substitute forms

are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, BRC Forms 541 (and 541A and 541B) and BRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(34) Uniform Low-Level Radioactive Waste Manifest or uniform manifest - The combination of BRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(35) Uranium - Natural, depleted, enriched:

(A) Natural uranium - Uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) Depleted uranium - Uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) Enriched uranium - Uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(36) Waste collector - An entity, operating under a NRC, agreement state, or agency license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(37) Waste description - The physical, chemical and radiological description of a LLRW as called for on BRC Form 541.

(38) Waste generator - An entity, operating under a NRC, agreement state, or agency license, who:

(A) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(B) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a waste generator if the transfer of LLRW from its facility is defined as residual waste.

(39) Waste processor - An entity, operating under a NRC or agreement state license, whose principal purpose is to process, repackage, or otherwise treat LLRW or waste generated by others prior to eventual transfer of waste to a licensed LLRW land disposal facility.

(40) Waste type - A waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

(e) Transportation of radioactive material.

(1) Each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR Parts 170-189 appropriate to the mode of transport. The licensee shall comply with the following, particularly noting DOT regulations as applicable in the following areas:

(A) Packaging - 49CFR Part173: Subparts A, B, and I.

(B) Marking and labeling - 49 CFR Part 172: Subpart D, §§172.400 - 172.407, §§172.436 - 172.440, and Subpart E.

(C) Placarding - 49CFR Part172: Subpart F, especially §§172.500- 172.519, §172.556, and Appendices B andC.

(D) Accident reporting - 49 CFR Part 171:§171.15 and §171.16.

(E) Shipping papers and emergency information - 49 CFR Part 172: Subparts C and G.

(F) Hazardous material employee training - 49 CFR Part 172: Subpart H.

(G) Hazardous material shipper/carrier registration - 49 CFR Part 107: Subpart G.

(2) If DOT regulations are not applicable to a shipment of radioactive material, the licensee shall conform to DOT standards and requirements specified in paragraph (1) of this subsection to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements must be filed and approved by the agency. Any notification referred to in those requirements, must be submitted to the agency.

(f) Exemption for low-level radioactive materials.

(1) A licensee is exempt from all requirements of this section with respect to shipment or carriage of a package containing radioactive material having a specific activity not greater than 70 becquerels per gram (Bq/g) (0.002 microcuries per gram (μCi/g)).

(2) A licensee is exempt from all requirements of this section, other than subsections (e) and (i) of this section, with respect to shipment or carriage of the following packages, provided the packages contain no fissile material, or the fissile material exemption standards of 10 CFR 71.53 are satisfied:

(A) a package containing no more than a Type A quantity of radioactive material;

(B) a package in which the only radioactive material is LSA material or SCO, provided the external radiation level at 3 m from the unshielded material or objects does not exceed 10 millisieverts per hour (mSv/hr) (1 rem per hour (rem/hr)); or

(C) a package transported within locations within the United States which contains only americium or plutonium in special form with an aggregate radioactivity not to exceed 20 Ci.

(3) A licensee is exempt from all requirements of this section, other than subsections (e) and (i) of this section, with respect to shipment or carriage of LSA material in group LSA-I, or SCOs in group SCO-I.

(4) Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (39 CFR Parts 14 and 15), are exempt from these regulations to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted from these regulations to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of these regulations.

(5) Persons who discard licensed material in accordance with §289.202(fff) of this title are exempt from all requirements of this section.

(g) General license.

(1) NRC-approved package.

(A) A general license is hereby issued to any licensee of the agency to transport, or to deliver to a carrier for transport, radioactive material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(B) This general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of 10 CFR 71.

(C) This general license applies only to a licensee who meets the following requirements:

(i) has a copy of the specific license, certificate of compliance, or other approval by the NRC of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(ii) complies with the terms and conditions of the specific license, certificate, or other approval by the NRC, as applicable, and the applicable requirements of 10 CFR 71;

(2) Previously approved package.

(A) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the identification number of the NRC certificate of compliance, may be used under the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with NRC regulations at 10 CFR 71.85(c);

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval, as defined in DOT regulations at 49 CFR 173.403; and

(iii) a serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

(B) A Type B(U) package, a Type B(M) package, a LSA material package or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC certificate of compliance, may be used under the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the package is satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with NRC regulations at 10 CFR 71.85(c);

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval except approved under special arrangement in accordance with DOT regulations at 49 CFR 173.403; and

(iii) a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(3) DOT specification container.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in 49 CFR Parts 173 and 178.

(B) This general license applies only to a licensee who:

(i) has a copy of the specification;

(ii) complies with the terms and conditions of the specification and the applicable requirements of this section; and

(iii) has a quality assurance program required by 10 CFR 71.105.

(C) The general license in subparagraph (A) of this paragraph is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States except by multilateral approval as defined in 49 CFR 173.403.

(4) Use of foreign approved package.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by the DOT as meeting the applicable requirements of 49 CFR 171.12.

(B) This general license applies only to international shipments.

(C) This general license applies only to a licensee who:

(i) has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(ii) complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this section; and

(iii) the licensee has a quality assurance program approved by the NRC.

(h) Routine determinations. Before each shipment of radioactive material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this section and of the license. The licensee shall determine that:

(1) the package is proper for the contents to be shipped;

(2) the package is in unimpaired physical condition except for superficial defects such as marks or dents;

(3) each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(4) any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) any pressure relief device is operable and set in accordance with written procedures;

(6) the package has been loaded and closed in accordance with written procedures;

(7) any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable

for that purpose, unless it satisfies the design requirements of 10 CFR 71.45;

(8) the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable (ALARA), and within the limits specified in DOT regulations in 49 CFR 173.443;

(9) external radiation levels around the package and around the vehicle, if applicable, will not exceed the following limits at any time during transportation:

(A) Except as provided in subparagraph (B) of this paragraph, each package of radioactive materials offered for transportation must be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/hr (200 mrem/hr) at any point on the external surface of the package, and the transport index does not exceed 10.

(B) A package that exceeds the radiation level limits specified in subparagraph (A) of this paragraph must be transported by exclusive use shipment only, and the radiation levels for such shipment must not exceed the following during transportation:

(i) 2 mSv/hr (200 mrem/hr) on the accessible external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/hr (1,000 mrem/hr):

(I) the shipment is made in a closed transport vehicle;

(II) the package is secured within the vehicle so that its position remains fixed during transportation; and

(III) there are no loading or unloading operations between the beginning and end of the transportation;

(ii) 2 mSv/hr (200 mrem/hr) at any point on the outer surface of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(iii) 0.1 mSv/hr (10 mrem/hr) at any point 2 meters (m) (6.6 feet (ft)) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 m (6.6 ft) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(iv) 0.02 mSv/hr (2 mrem/hr) in any normally occupied space, except that this provision does not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices in conformance with §289.202(q) of this title;

(10) a package must be designed, constructed, and prepared for transport so that in still air at 38 degrees Celsius (100 degrees Fahrenheit) and in the shade, no accessible surface of a package would have a temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit) in a nonexclusive use shipment, or 85 degrees Celsius (185 degrees Fahrenheit) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation; and

(11) a package must not incorporate a feature intended to allow continuous venting during transport.

(i) Air transport of plutonium.

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of 49 CFR Chapter 1, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) the plutonium is contained in a medical device designed for individual human application; or

(B) the plutonium is contained in a material in which the specific activity is not greater than 0.002 μCi/g (70 Bq/g) of material and in which the radioactivity is essentially uniformly distributed; or

(C) the plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form, and is shipped in accordance with subsection (e) of this section; or

(D) the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

(2) Nothing in paragraph (1) of this subsection is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24.

(3) For a shipment of plutonium by air which is subject to paragraph (1) of this subsection, the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, DOT regulations applicable to the air transport of plutonium.

(j) Opening instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with §289.202(ee)(5) of this title.

(k) Records. Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of radioactive material showing the following where applicable:

(1) identification of the packaging by model number and serial number;

(2) verification that there are no significant defects in the packaging, as shipped;

(3) type and quantity of radioactive material in each package, and the total quantity of each shipment;

(4) date of the shipment;

(5) for fissile packages and for Type B packages, any special controls exercised;

(6) name and address of the transferee;

(7) address to which the shipment was made; and

(8) surveys performed to determine compliance with subsection (h)(8) and (9) of this section.

(l) Reports. The shipper shall immediately report by telephone, telegram, mailgram, or facsimile, all radioactive waste transportation accidents to the agency and the local emergency planning committees in the county where the radioactive waste accident occurs. All other accidents involving radioactive material shall be reported in accordance with §289.202(xx) and (yy) of this title.

(m) Advance notification of transport of certain radioactive waste.

(1) As specified in paragraphs (2)-(4) of this subsection, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of radioactive waste, through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of radioactive waste outside the confines of the licensee's facility or other place of use or storage.

(2) Advance notification is required under this section for shipment of radioactive waste when the following three conditions are met:

(A) the radioactive waste is required by this section to be in Type B packaging for transportation;

(B) the radioactive waste is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(C) the quantity of radioactive waste in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in subsection (vv)(2) of this section for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in subsection (vv)(2) of this section for normal form radioactive material; or

(iii) 1,000 terabecquerels (TBq) (27,000 curies (Ci)).

(3) The following are procedures for submitting advance notification:

(A) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the agency.

(B) A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(C) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of radioactive waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555.

(D) The licensee shall retain a copy of the notification as a record for three years.

(4) Each advance notification of shipment of radioactive waste must contain the following information:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the radioactive waste shipment;

(B) a description of the radioactive waste contained in the shipment, as specified in the regulations of DOT in 49 CFR Part 172, §172.202 and §172.203(d);

(C) the point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(D) the seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(E) the destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(F) a point of contact, with a telephone number, for current shipment information.

(5) A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the date, time, and name of the individual contacted for three years.

(6) The following are procedures for a cancellation notice.

(A) Each licensee who cancels a radioactive waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, and to the agency.

(B) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

(n) Emergency plan. Each shipper and transporter of radioactive waste shall adopt an emergency plan approved by the agency for responding to transportation accidents.

(o) Inspections. Each shipment of LLRW to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.

(p) Quality control program. Each shipper shall adopt a quality control program to include verification of the following to ensure that shipping containers are suitable for shipments to a licensed disposal facility:

(1) identification of appropriate container(s);

(2) container testing documentation is adequate;

(3) appropriate container used;

(4) container packaged appropriately;

(5) container labeled appropriately;

(6) manifest filled out appropriately; and

(7) documentation maintained of each step.

(q) Transfer for disposal and manifests.

(1) The requirements of this section and subsection (s)(5) of this section are designed to:

(A) control transfers of LLRW by any waste generator, waste collector, or waste processor licensee, as defined in this section, who ships LLRW either directly, or indirectly through a waste collector or waste processor, to a licensed LLRW land disposal facility, as defined in §289.201(b) of this title;

(B) establish a manifest tracking system; and

(C) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees must use subsection (s)(5) of this section.

(3) Each shipment of LLRW intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest in accordance with subsection (s)(5)(A) of this section.

(4) Any licensee shipping LLRW intended for ultimate disposal at a licensed land disposal facility must document the information required on the uniform manifest and transfer this recorded manifest information to the intended consignee in accordance with subsection (s)(5) of this section.

(5) Each shipment manifest must include a certification by the waste generator as specified in subsection (s)(5)(J) of this section, as appropriate.

(6) Each person involved in the transfer for disposal and disposal of LLRW, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in subsection (s)(5)(K) of this section, as appropriate.

(7) Any licensee shipping LLRW to a licensed Texas LLRW disposal facility shall comply with the waste acceptance criteria in 31 TAC §§451.21-451.29.

(r) Fees.

(1) Each shipper shall be assessed a fee for shipments of LLRW originating in Texas or out-of-state being shipped to a licensed Texas LLRW disposal facility and these fees shall be:

(A) $10 per cubic foot of shipped LLRW;

(B) collected by the Authority and deposited to the credit of the radiation and perpetual care fund; and

(C) used exclusively by the agency for emergency planning for and response to transportation accidents involving LLRW.

(2) Fee assessments under this section shall be suspended when the amount of fees collected reaches $500,000, except that if the balance of fees collected is reduced to $350,000 or less, the assessments shall be reinstituted to bring the balance of fees collected to $500,000.

(3) Money expended from the radiation and perpetual care fund to respond to accidents involving LLRW must be reimbursed to the radiation and perpetual care fund by the responsible shipper or transporter according to rules adopted by the board.

(s) Appendices.

(1) Determination of A_1 and A_2.

(A) Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these rules are given in paragraph (2) of this subsection. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) figure. The curie values are expressed to three significant figures to assure that the difference in the TBq and Ci quantities is one tenth of 1.0% or less. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(B) For individual radionuclides whose identities are known, but which are not listed in paragraph (2) of this subsection, the determination of the values of A_1 and A_2 requires NRC approval, except that the values of A_1 and A_2 in paragraph (3) of this subsection may be used without obtaining NRC approval.

(C) In the calculations of A_1 and A_2 for a radionuclide not in paragraph (2) of this subsection, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than ten days, or longer than that of the parent nuclide, shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten days, or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

(D) For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

(i) For special form radioactive material, the maximum quantity transported in a Type A package:
Figure 1: 25 TAC §289.257(s)(1)(D)(i)

(ii) For normal form radioactive material, the maximum quantity transported in a Type A package:
Figure 2: 25 TAC §289.257(s)(1)(D)(ii)

(iii) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:
Figure 3: 25 TAC §289.257(s)(1)(D)(iii)

(iv) An A_2 value for mixtures of normal form material may be determined as follows:
Figure 4: 25 TAC §289.257(s)(1)(D)(iv)

(E) When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in subparagraph (D) of this paragraph. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

(2) $A_1$and A_2 values for radionuclides. The following table contains A_1 and A_2 values for radionuclides:
Figure 5: 25 TAC §289.257(s)(2)

(3) General values for A_1 and A_2. The following table contains general values for A_1 and A_2:
Figure 6: 25 TAC §289.257(s)(3)

(4) Activity-mass relationships for uranium. The following table contains activity-mass relationships for uranium:
Figure 7: 25 TAC §289.257(s)(4)

(5) Requirements for transfers of LLRW intended for disposal at licensed land disposal facilities and manifests.

(A) Manifest. A waste generator, collector, or processor who transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed LLRW land disposal facility must

prepare a manifest reflecting information requested on applicable BRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable BRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)) or their equivalent. BRC Forms 540 and 540A must be completed and must physically accompany the pertinent LLRW shipment. Upon agreement between shipper and consignee, BRC Forms 541, 541A and 541B, and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the agency to comply with the manifesting requirements of this section when they ship:

(i) LLRW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(ii) LLRW that is being returned to the licensee who is the waste generator or generator, as defined in this section; or

(iii) radioactively contaminated material to a waste processor that becomes the processor's residual waste.

(B) Form instructions. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this subsection may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(C) Forms. BRC Forms 540, 540A, 541, 541A, 541B, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the agency.

(D) Information requirements of the DOT. This subsection includes information requirements of the DOT, as codified in 49 CFR Part 172. Information on hazardous, medical, or other waste, required to meet EPA regulations, as codified in 40 CFR Parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the uniform manifest required by this section.

(E) General information. The shipper of the LLRW, shall provide the following information on the uniform manifest:

(i) the name, facility address, and telephone number of the licensee shipping the waste;

(ii) an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(iii) the name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(F) Shipment information. The shipper of the LLRW shall provide the following information regarding the waste shipment on the uniform manifest:

(i) the date of the waste shipment;

(ii) the total number of packages/disposal containers;

(iii) the total disposal volume and disposal weight in the shipment;

(iv) the total radionuclide activity in the shipment;

(v) the activity of each of the radionuclides hydrogren-3, carbon-14, technetium-99, iodine-129, chlorine-36, nickel-63, strontium-90, cesium-137, radium-226, and any other isotopes with a half-life greater than 35 years contained in the shipment; and

(vi) the total masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(G) Disposal container and waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(i) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(ii) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(iii) the volume displaced by the disposal container;

(iv) the gross weight of the disposal container, including the waste;

(v) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(vi) a physical and chemical description of the waste;

(vii) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(viii) the approximate volume of waste within a container;

(ix) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(x) the identities and activities of individual radionuclides contained in each container, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(xi) the total radioactivity within each container; and

(xii) for wastes consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title must be identified.

(H) Uncontainerized waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(i) the approximate volume and weight of the waste;

(ii) a physical and chemical description of the waste;

(iii) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(iv) for waste consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title must be identified;

(v) the identities and activities of individual radionuclides contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(vi) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(I) Multi-generator disposal container information. This subparagraph applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLRW resulting from a processor's activities may be attributable to one or more generators (including waste generators) as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(i) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(ii) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(I) the volume of waste within the disposal container;

(II) a physical and chemical description of the waste, including the solidification agent, if any;

(III) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(IV) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in §289.202(ggg)(4)(B)(ii) of this title; and

(V) radionuclide identities and activities contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(J) Certification. An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

(K) Control and tracking.

(i) Any licensee who transfers LLRW to a land disposal facility or a licensed waste collector shall comply with the requirements in subclauses (I)-(IX) of this clause. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of subclauses (IV)-(IX) of this clause. A licensee shall:

(I) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(II) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater then Class C waste, in accordance with §289.202(ggg)(4)(A) of this title;

(III) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(IV) prepare the uniform manifest as required by this subsection;

(V) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the manifest precedes the LLRW shipment; or

(-b-) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(VI) include the uniform manifest with the shipment regardless of the option chosen in subclause (V) of this clause;

(VII) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(VIII) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title; and

(IX) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this subsection, conduct an investigation in accordance with clause (v) of this subparagraph.

(ii) Any waste collector licensee who handles only prepackaged waste shall:

(I) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(II) prepare a new uniform manifest to reflect consolidated shipments that meet the requirements of this subsection. The waste collector shall ensure that, for each container of waste in the shipment, the uniform manifest identifies the generator of that container of waste;

(III) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the uniform manifest precedes the LLRW shipment; or

(-b-) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to

the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(IV) include the uniform manifest with the shipment regardless of the option chosen in subclause (III) of this clause;

(V) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(VI) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(VII) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(VIII) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(iii) Any licensed waste processor who treats or repackages waste shall:

(I) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(II) prepare a new uniform manifest that meets the requirements of this subsection. Preparation of the new uniform manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in subparagraph (I) of this paragraph;

(III) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristics requirements in §289.202(ggg)(4)(B) of this title;

(IV) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §289.202(ggg)(4)(A) and (C) of this title;

(V) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(VI) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the uniform manifest precedes the LLRW shipment; or

(-b-) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(VII) include the uniform manifest with the shipment regardless of the option chosen in subclause (VI) of this clause;

(VIII) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(IX) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(X) for any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(XI) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(iv) The land disposal facility operator shall perform the following:

(I) acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of the uniform manifest to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the uniform manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

(II) maintain copies of all completed uniform manifests and electronically store the information required by §289.202(ggg)(4)(C)(iv)(II) of this title until the agency terminates the license; and

(III) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(v) Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in this section must undergo the following:

(I) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(II) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within two weeks of completion of the investigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Health
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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter E. Electroconvulsive Therapy

25 TAC §§405.108, 405.112, 405.117

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §405.108 and §405.112 of Chapter 405, Subchapter E, concerning electroconvulsive therapy, with changes to the text as proposed in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11636). New §405.117 is adopted without changes to the proposed text.

The amendments to §405.108 implement provisions of Senate Bill 1309 of the 75th Legislature, which revised the Texas Health and Safety Code, §578.003. The amendments provide additional protections in §405.108(d) and new (h) for patients aged 65 years of age or older for whom electroconvulsive therapy (ECT) is recommended, and also delete the adjective "remote" as a modifier of "death" in §405.108(e)(3)(D), which describes a requirement that the written consent must clearly and explicitly state certain risks and consequences of ECT.

The amendments to §405.112 respond to confusion expressed by some hospitals and physicians by clarifying the quarterly deadlines for reporting ECT data in subsection (b)(1)(B).

New §405.117 lists three exhibits described in §405.108 and §405.112.

Minor revisions to language in §405.108(d) and §405.112(b)(1) clarify references to the three exhibits listed in new §405.117. Language has been revised in §405.108(d)(5) to be consistent with the provisions of SB 1309; specifically, an "a" is substituted for "the" in the phrase "a patient 65 years of age or older; "known" is inserted before "current medical conditions"; and "two physicians" is added to clarify that the statement of medical necessity for persons 65 years of age or older must be signed by two physicians. In §405.108(h), the term "supplemental statement" is substituted for "written supplement" in two places to be consistent with usage elsewhere in the section. Also in §405.108(h), "stating" is substituted for "attesting" and "and" for "or" to more accurately reflect the language of SB 1309. Language in §405.112(b)(1) which had been proposed for deletion has been restored. The language requires the collection of clinical data based upon the physician's assessment of degrees of severity before and after ECT of memory impairment and symptomatology. Exhibit C titled "Report of ECT and Other Therapies" has been revised accordingly.

A hearing to accept oral and written testimony from the public concerning the proposed amendments and new section was held on Friday, December 19, 1997, in the department's Central Office auditorium in Building 2, 909 West 45th Street in Austin. Testimony was presented by Advocacy, Inc., Austin; two physicians in private practice, Austin; Restoring and Educating People Effected by ECT, (RESPECT), Houston; and an individual speaking on behalf of three advocacy organizations, Psychee, Committee for Truth in Psychiatry (CTIP), and Christians United to Ban Electroshock Therapy (CUBES), Giddings. Written comments were received from the following members of the public: a consumer/advocate, Austin; Advocacy Inc., Austin; Texas Hospital Association (THA), Austin; Texas Medical Association (TMA), Austin; Texas Mental Health Consumers (TMHC), Austin; and Texas Society of Psychiatric Physicians (TSPP), Austin.

One commenter, in addressing testimony offered during the public hearing, expressed concern that much of the testimony was misinformation promulgated by a small number of individuals and groups who wish to discredit psychiatry and psychiatric treatments and who do not represent the vast numbers of patients, consumers, or professionals. He stated that the activities of these individuals and groups perpetuate myths of psychiatric treatment and the stigma of mental illness. Another commenter presented rebuttal testimony to statements of others who had testified earlier in the hearing. The department responds that the comments are outside the scope of the proposed amendments and new section.

One commenter suggested that information about advance directives for mental health treatment be presented to consumers at a time when they are stabilized and able to consult with other people and conduct research about electroshock therapy. This would allow consumers to make an unhurried, dispassionate decision. The department agrees that providing educational material concerning advance directives for mental health treatment is a good idea. The commenter is invited to submit this recommendation for consideration when the subchapter is comprehensively revised as part of the rules sunset review process required by Section 167 of Article IX of the current Appropriations Act. The department also notes that in an information bulletin "For Your Information" (FYI) dated September 22, 1997, information concerning advance directives for mental health treatment was distributed; statutory provision for the directives was added by SB 972 of the 75th Legislature to the Texas Civil Practice and Remedies Code, Chapter 137.

The same commenter also recommended that laws concerning the disclosure of side effects be strengthened, but provided no specifics. The department responds that it continues to dialogue interested parties concerning the state's ECT statutes.

A commenter stated that laws regarding safeguards for patients who receive ECT are not being enforced as intended by the legislature and recommended that they be more stringently followed. The department responds that specific concerns about compliance with, and enforcement of, laws governing ECT should be reported to the Texas Department of Health (TDH) at 1/800-228-1570. TDH is the state agency with responsibility for investigating allegations of violations of laws and rules governing ECT.

The commenter also recommended that magnetic resonance imaging (MRI) be used before and after ECT treatment, that cognitive skill testing be conducted before and after ECT, and that memory testing be conducted before ECT, immediately after in two-week intervals, and in four-month intervals after final ECT treatments. The department responds that studies in which attempts have been made to detect brain damage resulting from ECT using MRI indicate that MRI of extremely limited or negligible value for that purpose. The American Psychiatric Association (APA) guidelines for ECT recommend that MRI should only be considered if other data suggest that an abnormality may be present. The expense and rigor required to obtain reliable data from cognitive skills testing and memory testing suggests that such an approach, while possibly appropriate for a limited research study, is not feasible as a statewide requirement.

A commenter recommended that ECT be performed only on an inpatient basis and that if ECT is performed as maintenance treatment, the patient should remain in the hospital for at least

48 hours. The department responds that the standard of professional care and practice for any medical procedure is that the physician will evaluate the patient's clinical needs and support system and prescribe care accordingly.

A second commenter requested the addition of language to ensure that prior to discharging a patient, a physician has assessed the individual and determined that the individual is capable of addressing daily activities or has a support system to address these needs. The department declines to add the language as requested and notes again that doctors are expected to comply with the accepted standard of professional care and practice for any medical procedure, which includes evaluating the patient's clinical needs and support system before authorizing the patient's discharge.

One commenter recommended that physical examinations of patients recommended for ECT be conducted by a physician other than a psychiatrist, and that a physical examination be conducted both before and after an ECT treatment. Two other commenters recommended that the second physician required in §405.108(d) and (h) not be a psychiatrist but rather a "physical medical doctor" who is "familiar with cardiovascular, musculoskeletal, neurologic and other complications." The department responds that a psychiatrist who performs or recommends ECT is more likely to be sensitive to the physiological affects of the treatment and is qualified to address the issue of medical conditions which may increase the possibility of injury or death as a result of ECT.

A commenter recommended that ECT be recommended only for the treatment of depression and only as a last means of treatment when other methods of treatment have proven ineffective. The department responds that the APA guidelines for ECT recognize its effectiveness of all subtypes of bipolar disorder major depression, all types of mania, and for psychotic schizophrenic exacerbations in certain situations. The APA guidelines also recognize that ECT may be appropriate as a first line of treatment in certain situations prior to a trial of psychoactive medications, such as when a need for rapid, definitive response exists for medical or psychiatric reasons, when the risks of other treatments outweigh the risk of ECT, or when a history of poor drug response and/or good ECT response exists for previous episodes of the illness, or when the patient expresses a preference for ECT.

A commenter expressed concern that health insurance companies, particularly health maintenance organizations (HMOs), are pushing for the use of ECT as a rapid response treatment so patients can be discharged from inpatient settings quickly. The commenter urged that adequate protections be developed to prevent patients from being dismissed without necessary and appropriate post-treatment care. The department responds that the corporate policies of health insurers vary widely, but all health insurers in Texas, excluding ERISA insurers, are regulated by the Texas Department of Insurance (TDI). TDI rules require that insurers provide mechanisms by which consumers can appeal the insurer's decisions. Consumers can also complain directly to TDI (1-800-252-3439) which investigates complaints and has authority to enforce rules governing health insurance.

Six commenters recommended the retention of a provision proposed for deletion in §405.112(b)(1) concerning the collection of clinical data concerning memory loss and symptomology from before, during, and 30 days after ECT is performed. Two commenters recommended that the department develop a consumer-driven system for reporting occurrences of memory loss similar to the system used by California. One commenter stated that while subjective, the information which has been collected has proven useful and that the a physician's assessment of the patient's degree and scope of memory loss is practical and already is routinely done. The department has restored the language in §405.112(b)(1) and in Exhibit C.

With regard to §405.108, concerning informed consent to ECT, a commenter recommended adding language specifying that if a patient receiving psychoactive medications under court order is recommended for ECT, the issue of the patient's capacity to consent to ECT must be submitted to the court for consideration. The department responds that the statutory provisions concerning a patient's capacity to provide consent to the administration of psychoactive medications are narrowly drawn and no statutory authority exists for the department to petition a court for permission to perform ECT.

A commenter recommended that the initial consent for ECT or series of ECT be videotaped as a safeguard for both the department and the patient. The department responds that videotaping currently is not a standard of practice when obtaining consent for medical procedures. In addition, such a requirement could be expected to carry a significant fiscal impact.

A commenter expressed concern that patients are being asked to sign consent for second and subsequent treatments while still confused and suffering memory loss from the previous treatments. The commenter requested that time intervals between signatures on the consent form be researched and the information shared with the commenter. The department responds that the time intervals between treatments in a series are driven by clinical considerations specific to each patient.

Concerning the provision in §405.108(g), which permits a patient's guardian to authorize both the series and each individual treatment via a faxed or mailed signature sheet, a commenter recommended adding language requiring the patient to be provided with the signed consent form well in advance of the initial treatment and to have the information explained orally. The department responds that §405.108(f)(1) already requires both patient and guardian to be provided with a copy of the completed consent form and supplemental statement and (f)(2) requires the information in the consent form and supplemental statement to be explained orally in simple, nontechnical terms to both the patient and guardian. The department also notes that the length of time between the presentation of the consent form and performance of ECT is dictated by clinical considerations. The commenter also requested that when multiple signatures are recorded simultaneously by the guardian on the consent form, the patient still must be presented with the document and have the information explained orally. The department responds that neither statute nor rule permits the simultaneous recording of multiple signatures on the consent form. Both statute (§578.003(c)(4)) and rule (§405.108(c)) require that the consent form be signed before each treatment in a series.

A commenter requested that the "or" in new §405.108(h) be replaced by an "and" consistent with SB 1309, which requires both patient and guardian to be presented with the completed consent forms. The department agrees that this change conforms to the intent of the statute amended by SB 1309 and has revised the language accordingly.

A commenter stated that the requirement in §405.108(d) and (h) that two physicians sign the supplemental statement for patients over 65 places an undue burden and cost on hospitals and physicians who perform ECT, especially in rural areas where finding a second physician may be difficult and could delay administration of necessary treatment. In addition, the commenter said, it is likely that obtaining the second signature would involve a second evaluation and thus a second charge to the patient. In this way, the patient in need of ECT would be greatly disserviced by having to wait for this unnecessary step and by having to pay for an additional consultation, if necessary, to obtain the second signature. The department responds that the provision is required by SB 1309.

A commenter requested that the designation of "treating" and "consulting" be deleted for the two signature for physicians on the portion of the supplemental statement (Exhibit B) dealing with patients 65 years of age or older. The commenter stated that SB 1309 specifies only that two physicians sign the form, without specifying "treating" and "consulting." The department responds that requiring this information is consistent with statutory intent.

A commenter recommended that Exhibit C (Report of ECT and Other Therapies) not include the date of the most recent ECT or the names of the physician who performed ECT or the psychiatrist who ordered ECT because the statute does not require this information be submitted in the quarterly reports. The commenter stated that identifying the names of the physician and psychiatrist is a breach of confidentiality. A second commenter also raised the issue of breach of confidentiality if the name of a psychiatrist who orders ECT is included in the form. The second commenter also said that if the department decides to retain the requirement, the name should not be disclosed except for agency analysis in any copy of, or report generated from the data submitted on the form. The department responds that while the statute does not specifically require that the information in question be reported, §578.007(b)(9) of the Texas Health and Safety Code permits the department to ask for other information on the quarterly reports. As the state regulatory agency for ECT, the department needs this information if issues should arise about the treatments covered in the quarterly reports. Concerning the second commenter's request that the name of the psychiatrist ordering the ECT not be disclosed, the department explains that the report required in THSC §578.008(b) to be filed with the governor and the presiding officer of each house of the legislature does not include the names of any physicians. The statute, in fact, requires that the names of private physicians performing ECT on an outpatient basis not be included in the report.

A commenter recommended Exhibit C (Report of ECT and Other Therapies) not include "DSM diagnosis" and "type of stimulus equipment used" because the THSC, §578.007, does not require this information be submitted in the quarterly reports. The commenter also recommended that deaths not be considered reportable events to be included in the quarterly report since the statute requires reporting "the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death." The commenter noted that the statute requires that autopsy findings be reported "if death followed within 14 days after the date" of treatment. The department responds that although the statute does not specifically require that the information in question be reported, THSC, §578.007(b)(9), permits the department to ask for other information on the quarterly reports. Also the department believes that requiring that deaths be reported on Exhibit C is not inconsistent with the statutory requirement of submitting autopsy findings for deaths occurring within 14 days after an ECT treatment.

The sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; with §571.006, which provides for the adoption of rules as necessary for the proper and efficient treatment of persons with mental illness; and with §578.003 which provides for the adoption of rules related to the standard written consent form.

§405.108. Informed Consent to ECT.

(a) Consent under this section is not valid unless the person giving consent understands the information presented and consents voluntarily and without coercion or undue influence.

(b) A person who gives consent may revoke consent for any reason at any time, with revocation effective immediately.

(c) Prior to each individual ECT treatment, consent to electroconvulsive therapy must be obtained. Unless the person consents in accordance with this subchapter, ECT may not be administered to:

(1) a patient who is 16 years or older and voluntarily receiving services;

(2) an involuntary patient who is 16 years or older and who has not been adjudicated incompetent to manage his or her own personal affairs;

(3) an involuntary patient who is 16 years or older and who has been adjudicated incompetent to manage his or her own personal affairs, unless:

(A) the patient has an appointed guardian of the person of the patient;

(B) the guardian of the person consents to treatment in accordance with this section; and

(C) the consent of the guardian is based on knowledge of what the patient would desire, if known.

(d) Consent shall be documented by the signature of the person giving consent on the form entitled "Disclosure and Consent for Electroconvulsive Therapy" which is referenced as Exhibit A of §405.117 of this title (relating to Exhibits), and which shall include a supplemental statement about the individual patient containing the information in the form entitled "Supplemental Statement" which is referenced as Exhibit B of §405.117 of this title (relating to Exhibits), including:

(1) indications for therapy for the patient;

(2) medical evaluation results;

(3) contraindications to therapy;

(4) results of psychiatric and other medical consultation(s) relevant to ECT; and

(5) for a patient 65 years of age or older:

(A) known current medical conditions that may increase the possibility of injury or death as a result of ECT; and

(B) statement by two physicians that the treatment is medically necessary.

(e) The consent form shall be fully completed to explicitly state the following information:

(1) the nature and seriousness of the mental condition requiring ECT;

(2) the nature of the procedures to be followed, including anesthesia, and their purposes, including the identification of any procedures which are experimental;

(3) the nature, degree, duration, and probability of significant risks and/or side effects and/or adverse effects resulting from ECT commonly known by the medical profession, including:

(A) memory changes of events prior to, during, and immediately following the treatment;

(B) fractures and dislocations of bones;

(C) the probability of significant temporary post-treatment confusion requiring special care; and

(D) the possibility of permanent memory dysfunction, especially noting the possible degree and duration of memory loss, the possibility of permanent, irrevocable memory loss, the remote possibility of seizures, and the possibility of death;

(4) that there is a division of opinion as to the efficacy of the procedure;

(5) the benefits reasonably to be expected;

(6) the probable degree or duration of improvement or remission expected with or without the procedure;

(7) a disclosure of any appropriate alternative procedures that might be advantageous for the patient;

(8) an offer to answer any inquiries concerning the procedures;

(9) an instruction that the consenting party is free to withdraw consent and to discontinue an individual treatment or a series of treatments at any time without prejudice to the care of the individual;

(10) an instruction that consent is for one individual treatment, and that additional treatments shall require renewed written informed consent; and

(11) the side effects of anesthesia shall also be explained.

(f) Before a patient receives ECT, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receive a copy of the completed consent form, a written supplement containing related information concerning the individual patient, in the patient's primary language, if possible;

(2) the consent form and supplement are orally explained to the patient and the patient's guardian of the person, if any, in simple, nontechnical terms in the patient's primary language, if possible, or by means reasonably calculated to communicate with a hearing-impaired or visually-impaired person, if applicable;

(3) the patient or the patient's guardian of the person, as appropriate, signs the consent form, which states that the person has read and understood the consent form and written supplement; and

(4) the signed consent form is made a part of the patient's permanent medical record.

(g) In cases in which the individual giving consent is the guardian of the person, the requirements of the consent process may be fulfilled through a phone conversation that includes all of the elements that would be discussed in person, witnessed by one individual who is not the physician who will be administering ECT. A copy of the consent form and written supplement must be mailed or faxed to the individual giving consent prior to obtaining the initial informed consent. The consent must be obtained for each individual treatment.

(h) For a patient 65 years of age or older, before each treatment series begins the hospital, facility, or physician administering the procedure shall:

(1) ensure two physicians sign the appropriate section of the supplemental statement described in subsection (d)(5) of this section stating that the treatment is medically necessary; and

(2) inform the patient and the patient's guardian of the person, if any, orally and in the supplemental statement described in subsection (d)(5) of this section, of any known current medical condition the patient has that may increase the possibility of injury or death as a result of the treatment.

§405.112. Report of ECT.

(a) Reporting requirements for state facilities and community centers.

(1) A report of each individual ECT administered to a patient shall be entered into the patient's medical record and shall include, but not be limited to, the following:

(A) diagnosis for which ECT given;

(B) date of treatment;

(C) type of ECT machine used;

(D) duration and strength of electrical stimulation;

(E) all medications administered; and

(F) any complications or adverse effects.

(2) A report of all ECT treatments will be provided at the end of each month to the chief executive officer. The report shall include the following:

(A) name, age, gender, and identification number of patient;

(B) diagnosis for which ECT given;

(C) dates and number of treatments given; and

(D) any complications or adverse effects.

(b) Reporting requirements for all providers.

(1) On a quarterly basis, the chief executive officer of a mental hospital or other facility that administers ECT, psychosurgery, "prefrontal sonic treatment," or any other convulsive or coma-producing therapy to treat mental illness and any physician who administers ECT on an outpatient basis shall make a written report to the TXMHMR medical director containing the information requested on the form entitled "Report of ECT/Other Therapies" which is referenced as Exhibit C of §405.117 of this title (relating to Exhibits). The reporting format requires clinical data from before, after, and 30 days after treatment.

(A) The facility and/or its medical staff shall require that the treating physician(s) provide complete, accurate, and timely information to the CEO for this purpose.

(B) Reports must submitted to be received by the TXMHMR medical director not later than 30 days following the end of each state fiscal year quarter. For treatments administered in September, October, and November, the deadline is December 31; for December, January, and February, the deadline is March 31; for March, April, and May, the deadline is June 30; and for June July, and August, the deadline is September 30.

(2) The report will include, but may not be limited to, the following information for the quarter:

(A) the number of persons who received the therapy, including:

(i) the number of persons receiving voluntary mental health services who consented to the therapy;

(ii) the number of involuntary patients who consented to the therapy; and

(iii) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(B) the age, gender, and race of the persons receiving therapy;

(C) the general source of the treatment payment;

(D) the number of non-electroconvulsive treatments listed in paragraph (1) of this subsection;

(E) the number of electroconvulsive treatments administered for each complete series of treatments, excluding maintenance treatments;

(F) the number of maintenance electroconvulsive treatments administered;

(G) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(H) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(I) other information that may be required by the department.

(c) Reporting requirements for the department.

(1) Annually the department shall compile the information reported under subsection (b) of this section by mental hospital, other facility, and private physician administering ECT on an outpatient basis. Private physicians and individual patients shall not be named or otherwise identified.

(2) A copy of the report shall be filed with the governor and presiding officer of each house of the legislature.

(3) The department shall use this information to analyze, audit, and monitor the use of ECT and other reportable procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 1998.

TRD-9801022

Ann Utley

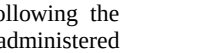
Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: February 11, 1998

Proposal publication date: November 28, 1997

For further information, please call: (512) 206–4516



Chapter 415. Provider Clinical Responsibilities

Subchapter C. Use and Maintenance of *TDMHMR Drug Formulary*

25 TAC §§415.101–415.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§415.101-415.114 of Chapter 415, Subchapter C, concerning use and maintenance of *TDMHMR Drug Formulary.* Sections 415.101-415.111, and 415.113 are adopted with changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22TexReg11211- 11214). Sections 415.112, and 415.114 are adopted without changes to the proposed text.

The new sections describe the policies and procedures governing the use and maintenance of the *TDMHMR Drug Formulary* in department facilities and in community-based settings for mental health and mental retardation services that are funded by TDMHMR. Currently the policies and procedures contained in the subchapter are applicable to only department facilities and state-operated community services. Statewide use of the *TDMHMR Drug Formulary* ensures that individuals receiving inpatient/residential and community-based services have access to the same drug treatment.

Pursuant to Texas Health and Safety Code, Section 531.001 et seq., it is the policy of the State of Texas to provide mental health and mental retardation services that are, to the extent feasible and appropriate, community-based, and which are coordinated across program and agencies. Medication is one of several core community-based services that the department is required to ensure on a statewide basis. Medication often plays a pivotal role in the ability of a consumer to leave an inpatient or residential setting and return to the community, to stay in the community, and to avoid further institutionalization. To maintain community living, it is critical that the individual's plan of care, including medication, not be changed except for sound clinical reasons. Unnecessary disruption in a consumer's medication regimen can lead not only to unnecessary suffering and health risks, but it can also result in the exacerbation of symptoms to the extent that admission or readmission to inpatient or residential care is necessary. Part of the department's role as the state mental health and mental retardation authority involves ensuring that medication services are coordinated across settings, so that a consumer leaving a state facility does not experience clinically unjustified variations in the medication plan of care. By requiring all providers in the TDMHMR service delivery system to make the same medications available, the department ensures that differing formularies do not create barriers to a consumer's continued prescribed plan of care across service settings. The avoidance of institutionalization is generally preferred by consumers and community-based care is also more cost-efficient for the State of Texas. Limited resources for mental health and mental retardation services, which are historically underfunded in Texas compared to many other states, can be used to serve more Texans to the extent that community-based services are made a viable option to institutionalization. The extension of the on a systemwide basis is one mechanism the department is using for this purpose.

The title of the formulary has been corrected from *TXMHMR Drug Formulary* to *TDMHMR Drug Formulary* throughout the subchapter, including the subchapter's title. All references to "state-funded community hospital" have been deleted, not because the subchapter does not apply to state-funded community hospitals, but because state-funded community hospitals contract with local authorities making them a "contractor" rather than a "service system component." Language has been added to the application section clarifying that the formulary in its entirety applies to state hospitals, state schools, state centers, and SOCS in all circumstances except when an individual receives acute care services of limited duration in a general hospital. Language has been added to §415.106(c) clarifying that the TDMHMR pharmacy discipline head's membership on the Executive Formulary Committee is not subject to a limited term. Language has been added to §415.107(c) clarifying that the formulations that are allowed for general use by service system components and their contractors will be designated by the Executive Formulary Committee beginning with the 1998 *TDMHMR Drug Formulary*. Language regarding the selection of the least expensive brand of bioequivalent drug products by the Executive Formulary Committee has been deleted because each facility pharmacy is responsible for selecting the least expensive brand of bioequivalent drug products available through the pharmacy contract buying group system. Language has been added to §415.110(c) and §415.111(b) regarding the written policies and procedures for approval of non-formulary drugs and the reporting of adverse drug reactions. The reference section has been updated.

Public comment was received from Riceland Regional Mental Health Authority, Wharton, and San Antonio Alliance for the Mentally Ill, San Antonio.

One commenter stated the belief that the rule would limit the formulary's use to psychotropic medications for outpatient centers. The commenter also stated the belief that the rule would not require outpatient centers to *carry or dispense* non-psychotropic medications currently on the formulary. The department responds that the formulary's use is limited only to those medications and medication-related services funded by TDMHMR. Regarding outpatient centers *carrying or dispensing* non-psychotropic medications currently on the formulary, the department responds that the subchapter does not require local authorities (outpatient centers) to carry or dispense *any medication*. The subchapter simply requires local authorities to *prescribe* TDMHMR-funded medications from the formulary. The department notes that the subchapter includes procedures for applying to have drugs added to the formulary as well as procedures for prescribing non-formulary drugs.

The same commenter suggested that the Executive Formulary Committee include official representation of a community center medical director, with such person being appointed by the Medical Directors Consortium. The department responds that the TDMHMR medical director is responsible for appointing committee members. The department notes that there are four positions for local authority practitioners on the committee, one of which could be filled by the medical director of a community center, if the center is also a local authority.

One commenter stated that the rule needs to clarify whether it applies to county jails, and if so, under what circumstances. The department responds that it does not have the authority to require all county jails to use the *TDMHMR Drug Formulary*. However, if a county jail contracts with a service system component (i.e., a state hospital, state school, state center, state-operated community services, or local authority) to provide medication and medication-related services funded by the department, then the formulary would apply to that county jail.

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and with the Texas Health and Safety Code, §534.052, which requires the Texas MHMR Board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

§415.101. Purpose.

The purpose of this subchapter is to provide policies and procedures governing the use and maintenance of the *TDMHMR Drug Formulary*.

§415.102. Application.

(a) This subchapter applies to state hospitals, state schools, state centers, state-operated community services (SOCS), Central Office, local authorities, and their respective contractors for mental health and mental retardation services funded by the Texas Department of Mental Health and Mental Retardation. (The *TDMHMR Drug Formulary* in its entirety applies to state hospitals, state schools, state centers, and SOCS in all circumstances except when an individual receives acute care services of limited duration in a general hospital.)

(b) State hospitals, state schools, state centers, state-operated community services (SOCS), Central Office, and local authorities are responsible for amending the contracts of their contractors that provide TDMHMR-funded mental health and mental retardation services to ensure their compliance with this subchapter.

§415.103. Definitions.

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

Adverse drug reaction - Any adverse symptom or sign that is an unexpected reaction to medication and that is noxious, unintended, and occurs at doses normally used in humans for the prophylaxis, diagnosis, or therapy of disease, or for the modification of physiological function.

Contractor - An entity that provides TDMHMR-funded mental health or mental retardation services pursuant to a contract with a service system component or the department.

Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Drug entity - A specific chemical compound and all of its pharmaceutically equivalent salt forms which are used in the treatment or mitigation of disease.

Emergency - A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threat, attempts, or other acts the individual overtly or continually makes or commits.

Facility - A state hospital, state school, or state center.

Individual - Any person receiving services from a service system component or contractor.

Local authority - An entity to which the Texas Mental Heath and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

Practitioner - A person who acts within the scope of a professional license to prescribe, distribute, administer, or dispense a prescription drug or device, (e.g., a physician, nurse, nurse practitioner, pharmacist, dentist).

Pharmacy and therapeutics committee - A facility committee composed of physicians, pharmacists, registered nurses, and others as appointed by the facility CEO that recommends drug-related policy to the facility's clinical/medical director and CEO.

TDMHMR Drug Formulary or formulary - A continually revised printed listing by nonproprietary name of all drugs approved for use by service system components and their contractors.

Reserve drug - A formulary drug with specific guidelines for use as described in the formulary.

Service system component - A state hospital, state school, state center, state-operated community services (SOCS), or local authority.

§415.104. General Requirements.

(a) The Texas Department of Mental Health and Mental Retardation maintains a closed formulary (*TDMHMR Drug Formulary*) that lists drugs approved by the Executive Formulary Committee for use by service system components and their contractors.

(b) A drug is not available for general use by service system components or their contractors unless it is approved by the Executive Formulary Committee. Drugs not listed in the *TDMHMR Drug Formulary* or the *Interim Formulary Update* may not be used except under the limited circumstances described in §415.110 of this title (relating to Prescribing Non-formulary Drugs).

(c) The use of formulary drugs in unusual clinical situations or the use of unusual drug combinations must be accompanied by written justification in the medical record. Additional clinical consultation in these situations should occur as deemed necessary by the prescribing physician.

(d) Reserve drugs, as defined in §415.103 of this title (relating to Definitions), may be prescribed for use outside the guidelines described in the formulary if the prescription is justified in the medical record and reviewed in routine audits of reserve drug use conducted by the service system component.

(e) Department rules governing research, Chapter 405, Subchapter P of this title (relating to Research in Departmental Facilities), applies to all research, including drug research, at facilities and state-operated community services (SOCS). Local authorities conducting research must comply with Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects) as required by Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards), Standard 3.5.P.

§415.105. Organization of TDMHMR Drug Formulary.

Drugs are listed in the *TDMHMR Drug Formulary* by nonproprietary name. The list is based on a modified format of the *American Hospital Formulary Service Drug Information* and includes an alphabetical index. Proprietary names may follow in parentheses for information only; the listing of proprietary names is not an endorsement. Other prescribing information is provided as determined necessary by the Executive Formulary Committee. The *American Hospital Formulary Service Drug Information* serves as a standard reference in addition to the approved Food and Drug Administration product labeling. Limitations recommended by the Executive Formulary Committee regarding the use of a drug are noted in the *TDMHMR Drug Formulary* , including specific limitations or guidelines for the use of a reserve drug.

§415.106. Executive Formulary Committee.

(a) Composition.

(1) The chairperson is a physician appointed by the TDMHMR medical director.

(2) The TDMHMR pharmacy discipline head serves as the permanent secretary of the committee and is responsible for preparing the agenda and minutes of committee meetings.

(b) Membership. Members of the Executive Formulary Committee are appointed by the TDMHMR medical director and include:

(1) two state hospital physicians;

(2) two state school physicians;

(3) one state center physician;

(4) one state-operated community services (SOCS) physician;

(5) four local authority practitioners;

(6) two facility pharmacy directors;

(7) one facility clinical pharmacologist;

(8) one facility registered nurse;

(9) the TDMHMR pharmacy discipline head;

(10) the following ex officio members:

(A) the TDMHMR medical director;

(B) the TDMHMR medical specialist for developmental medicine;

(C) the TDMHMR director, Mental Health Facilities;

(D) the TDMHMR director, Mental Retardation Facilities;

(E) the TDMHMR director, Community Services; and

(F) the TDMHMR director, Central Contracting and Procurement Support; and

(11) other persons as appointed by the TDMHMR medical director.

(c) Term of service. With the exception of the TDMHMR pharmacy discipline head, which is a standing membership, members serve staggered three-year terms and may be reappointed to one additional term. Ex officio members may be reappointed as specified by the TDMHMR medical director.

(d) Meetings. The Executive Formulary Committee meets at least quarterly.

(e) Administrative support. The TDMHMR medical director's office provides administrative support to the Executive Formulary Committee.

§415.107. Responsibilities of the Executive Formulary Committee.

(a) The Executive Formulary Committee maintains and updates the *TDMHMR Drug Formulary* by:

(1) recommending standards of drug use that discourage unnecessary duplication of therapeutic alternatives and encourage the highest standards of medical and pharmacy practice;

(2) periodically reviewing the drugs listed in the formulary to ensure consistency with need, effectiveness, risk, and cost;

(3) consulting with experts in clinical pharmacy, pharmacology, and other medical specialties as necessary to objectively assess drugs under consideration; and

(4) considering the applications submitted in accordance with §415.108 of this title (relating to Applying to Have a Drug Added to the Formulary) or as:

(A) presented by committee members; or

(B) submitted by other qualified persons at the invitation of the Executive Formulary Committee chairperson.

(b) The Executive Formulary Committee makes other recommendations concerning drug use and policy as requested by the TDMHMR medical director.

(c) Approval of a drug entity for inclusion in the *TDMHMR Drug Formulary* does not imply approval of all formulations for that drug. Beginning with the 1998 *TDMHMR Drug Formulary* , the Executive Formulary Committee will designate the formulations that are allowed for general use by service system components and their contractors.

(d) Approval of a drug formulation constitutes approval of all brands of the product that have been proven to be bioequivalent as listed in the *Approved Drug Products with Therapeutic Equivalence Evaluations*.

(e) For a drug entity that has known bioequivalency problems, the Executive Formulary Committee may limit its use to a specific brand based on objective clinical pharmacokinetics data.

§415.108. Applying to Have a Drug Added to the Formulary.

(a) Any member of the Executive Formulary Committee, any service system component practitioner, or any contract practitioner may apply to have a drug added to the *TDMHMR Drug Formulary* by completing the New Drug Application Form DF-1, referenced as Exhibit A in §415.112 of this title (relating to Exhibit) and including:

(1) published articles in biomedical literature that substantiate the efficacy and safety of the proposed drug;

(2) information on the advantages of the proposed drug compared with similar formulary drugs;

(3) a list of formulary drugs that the proposed drug would replace or supplement; and

(4) cost effectiveness data.

(b) Submitting the application.

(1) If the person submitting the application is a facility practitioner or a facility contract practitioner, then that practitioner submits the application to the facility's pharmacy and therapeutics committee for approval. If the committee approves the application, then it forwards the application to the Executive Formulary Committee.

(2) If the person submitting the application is a non-facility service system component practitioner or a non-facility service system component contract practitioner, then that practitioner submits the application to the component's clinical/medical director or designee who determines if the application is appropriate and complete, and if so, forwards the application to the Executive Formulary Committee.

(3) If the person completing the application is a member of the Executive Formulary Committee, then that person submits the application directly to Executive Formulary Committee.

(c) The Executive Formulary Committee considers the drug application and recommends:

(1) approving the proposed drug's inclusion and, if appropriate, approving audit criteria and recommending dosage guidelines;

(2) denying the proposed drug's inclusion;

(3) approving the proposed drug on a trial basis for a specified period of time;

(4) approving the proposed drug as a reserve drug, with guidelines; or

(5) postponing the decision until a later meeting. .

§415.109. Changing the TDMHMR Drug Formulary

(a) Changes to the *TDMHMR Drug Formulary* are based on need, effectiveness, risk, and cost as contained in current and unbiased biomedical literature.

(b) Recommendations by the Executive Formulary Committee for changes to the *TDMHMR Drug Formulary*, as reflected in the meeting's minutes, are submitted to the TDMHMR medical director.

(c) If the TDMHMR medical director or designee approves the recommendations, then the recommendations must be:

(1) identified as approved in writing before implementation; and

(2) listed in the *Interim Formulary Update* and distributed to the CEOs and clinical/medical directors of all service system components.

§415.110. Prescribing Non-formulary Drugs.

(a) Non-formulary drugs may be prescribed:

(1) if no formulary drug exists that is as safe or effective in the specified situation;

(2) if a limited trial of the drug appears to be safer or more effective than any drug listed in the formulary in anticipation of inclusion in the formulary;

(3) if the course of therapy established prior to the individual's admission would be interrupted; or

(4) in an emergency, as defined in §415.103 of this title (relating to Definitions).

(b) Each local authority shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non- formulary drugs by its practitioners and its contract practitioners.

(c) The department shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non- formulary drugs by facility practitioners and facility contract practitioners. The written policies and procedures shall be contained in the department's Pharmacy Management Operating Instruction.

§415.111. Adverse Drug Reactions.

(a) Each local authority shall develop written policies and procedures for reporting adverse drug reactions to the Food and Drug Administration.

(b) The department shall develop written policies and procedures for facilities when reporting adverse drug reactions to the Food and Drug Administration. The written policies and procedures shall be contained in the department's Pharmacy Management Operating Instruction.

§415.113. References.

The following department rules and policies, and federal statutes are referenced in this subchapter:

(1) Chapter 405, Subchapter P of this title (relating to Research in Department Facilities);

(2) Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards), Standard 3.5.P;

(3) Pharmacy Management Operating Instruction; and

(4) Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects).

This agency 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 January 22, 1998.

TRD-9801000
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 11, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 206–4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.414

The Commissioner of Insurance adopts an amendment to §1.414 concerning assessment of maintenance taxes and fees for payment in 1998. The amended section is adopted without changes to the proposed text as published in the December 19, 1997, issue of the *Texas Register* (221 TexReg 12392). A public hearing was held on January 8, 1998.

The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 1998 which will provide the revenue necessary to fund appropriations made by the Legislature.

Section 1.414 applies the rates to the gross premium receipts for the calendar year 1997, or some other basis designated by statute, to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. The department anticipates the adopted rates will produce revenue of $40,491,094 to the state's general revenue fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 23.08A, 1.03A, and Article 20A.33 (the Texas Health Maintenance Organization Act), which provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6 § 21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, Section 33 (codified at the Insurance Code, article 20A.33), establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on *January 20, 1998.

TRD-9800904
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 9, 1998
Proposal publication date: December 19, 1997
For further information, please call: (512) 463–6327

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28 TAC §1.415

The Commissioner of Insurance adopts an amendment to §1.415, concerning assessment of a maintenance tax surcharge which will be used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund. The

amended section is adopted without changes to the proposed text as publised in the December 19, 1997, issue of the *Texas Register* (22 TexReg 112393). A public hearing was held on January 8, 1998.

The amendment is necessary to adjust the rate of maintenance tax surcharges due in 1998 on the basis of gross premium receipts for calendar year 19977 for workers' compensation companies. The surcharge will be used to service the bonded indebtedness of the Texas Workers' Compensation Fund.

The Texas Workers' Compensation Commission annually establishes and certifies to the comptroller of public accounts the rate of assessment for the maintenance taxes which are authorized to pay the cost of administering the Texas Workers' Compensation Act. The commissioner of insurance may increase the Texas Workers' Compensation Commission tax rate to a rate sufficient to pay all debt service on the bonds issued on behalf of the Texas Workers' Compensation Insurance Fund, subject to the maximum rate established by the Texas Labor Code, §404.003. The department estimates $20,532,066 will be generated from the maintenance tax surcharge which will be used to pay debt service for $300 million in bonds issued in 1991 by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 5.76-3, 5.76-5, 5.68 and 1.03A and the Texas Labor Code, §403.002. The Insurance Code, Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.76-5 establishes the maintenance tax surcharge. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Texas Labor Code, §403.002 establishes the maintenance tax for workers' compensation insurance companies.

This agency 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 January 20, 1998.

TRD-9800903
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 9, 1998
Proposal publication date: December 19, 1997
For further information, please call: (512) 463–6327

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Chapter 7. Corporate and Financial Regulation

Subchapter J. Examination Expenses and Assessments

28 TAC §7.1012

The Commissioner of Insurance adopts an amendment to §7.1012 concerning assessments to cover the expenses of examining insurance companies. The amended section is adopted without changes to the proposed text published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12397). A public hearing was held on January 8, 1998.

The amendment is necessary to provide a rate of assessment for domestic and foreign insurance company examination expenses in 1998 which will provide the revenue necessary to fund the appropriations made by the Legislature.

Section 7.1012 provides the method and rates of assessment for examination expenses of foreign and domestic insurance companies. Rates of assessment are levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 1997 calendar year, and from each foreign insurance company examined during the 1998 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The department anticipates that the adopted rate will produce revenue of $8,681,786 to the state's general revenue fund. The expenses and charges to be assessed are in addition to, and not in lieu of, any other charge which may be made under the law, including the Insurance Code, Article 1.16.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 1.16 and 1.03A. The Insurance Code, Article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code, Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 25. Insurance Premium Finance

Subchapter E. Examinations and Annual Reports

28 TAC §25.88

The Commissioner of Insurance adopts an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expense assessment of insurance premium finance companies. The amendment is adopted

without changes to the proposed text published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12398). A public hearing was held on January 8, 1998.

The amendment is necessary to adjust the rate of assessment which is sufficient to meet the expenses of performing the department's statutory responsibilities for the regulation and examination of insurance premium finance companies.

The department levies the rate of assessment set in the section to cover the 1998 fiscal year's general administrative expense and will collect from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1997 calendar year. The department estimates that $303,524 will be collected for the state's general revenue fund.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 24.06(c), 24.09, and 1.03A. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 81. Insurance

34 TAC §§81.1, 81.3, 81.5, 81.7, 81.9, 81.11

The Employees Retirement System of Texas (ERS) adopts amendments to §§81.1, 81.3, 81.5, 81.7, 81.9, and 81.11, concerning the Uniform Group Insurance Program, with changes to the proposed text as published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10907).

These rules are being amended to bring them into compliance with recent legislation.

These rules are amended to add and clarify definitions, in addition to updating and clarifying existing rules to bring them into compliance with recent legislation.

One organization commented generally on the policy direction contemplated in the proposed amendments to 34 TAC Chapter 81, to select health maintenance organizations (HMOs) to participate in certain regions by competitive bidding. This commentator expressed concern that the selection of HMOs by competitive bid will place too much emphasis on low cost rather than overall quality. This commentator also expressed concern that proposed rule 34 TAC §81.3(c)(1)(A) and (B) would require the submission of duplicative proposals for each Regional Bidding Area (RBA) and requested that any duplicative information be required to be submitted only once. The commentator also requested clarification of the submission deadline for responses to the Request for Proposal. The commentator questioned proposed rule 34 TAC §81.7(a)(8) which would automatically place a participant in the HealthSelect plan if he moves out of the service area for HealthSelect Plus, and requested that such participant be permitted to select any HMO. Finally, the commentator questioned rule 34 TAC §81.7(g)(2) and (3) which states that an eligible participant must reside in the service area, rather than reside or work in the service area.

One state agency submitted comments regarding proposed rules for Accelerated Life Benefits (ALB). Regarding the proposed rules located at 34 TAC §81.1, the agency noted that Article 3.50-2, Texas Insurance Code, as amended by House Bill 163 requires that ALB be made available to annuitants but that the proposed rules do not refer to ALB being available to annuitants, and proposed 34 TAC §81.7 expressly prohibits annuitants from eligibility for ALB. The agency further noted that legislation makes ALB subject to Article 3.50-6, Texas Insurance Code, which was not referred to in the proposed rules either, nor were costs and conditions of coverages detailed. The agency suggested that the rules define "terminal illness", a term defined in Art. 3.50-6. The agency also suggested that the rule proposed at 34 TAC §81.7(j), which appears to prohibit retirees from electing ALB, conflicts with a provision in Senate Bill 1102 which makes ALB available to a retiree whose terminal condition began before retirement. The commentator recommended that the rules be clarified to state that the amount paid out as an accelerated benefit will be deducted from the amount otherwise payable as a death benefit. Finally, the commentator noted that Senate Bill 1102 provides that the trustee may provide ALB without increasing the cost of providing the benefit and suggested that the rules clarify whether there are any special premiums, charges or fees associated with exercising the ALB option.

A state legislator commented that the proposed rules are not consistent with House Bill 163 in that they do not make ALB available to annuitants as well as to employees and dependents. The commentator also noted that the proposed rules do not define "terminal illness", do not describe all of the costs and conditions associated with the accelerated benefit, and do not refer to Article 3.50-6, Texas Insurance Code, regarding ALB.

The ERS responded in writing to all commentators. To the HMO organization expressing concern that the selection of participating HMOs by competitive bidding will place too much emphasis on low cost rather than on overall quality, the ERS responded that, while cost containment is an important objective of the bidding process, premium cost will be only one important factor considered in the selection of HMOs to serve the Texas

Employees Uniform Group Insurance Program (UGIP). Other important factors will include quality of care and availability and accessibility of providers. In response to the organization's concern that the rules set out in 34 TAC §81.3 may require multiple response documents to the Request for Proposals (RFP), the ERS clarified that only one response document will be necessary. The ERS also clarified the filing deadline as requested. In response to the commentator's objection to proposed rule 34 TAC §81.7(a)(8) which would automatically place a participant in the HealthSelect of Texas plan if the participant moves out of the service area of the HealthSelect Plus plan, the ERS noted that this option was selected because both HealthSelect plans are self-insured by the ERS, and that the employee may change to any participating HMO during the next annual enrollment period. Finally, in response to the organization's comment that proposed rule 34 TAC §81.7(g)(2) and (3), which requires that a participant reside in an HMO's service area, is in conflict with the rule of the Texas Department of Insurance (TDI) and federal law, which permits participation in an HMO if the participant either lives or works in the HMO's service area, the ERS noted that it disagreed with TDI's rule and interpretation of federal law, but would follow the "live or work" rule as of the next annual enrollment period, effective September 1, 1998. Extensive system reprogramming and communications to over 250,000 employees and retirees prevent earlier adoption of the "live or work" rule for the UGIP.

In response to the state agency's comment that Article 3.50-2, Texas Insurance Code, as amended by House Bill 163, requires ALB to be made available to annuitants as well as employees and dependents, the ERS responded that because Senate Bill 1102 prohibits extending ALB to annuitants, the two bills are in direct conflict. The ERS has determined that, pursuant to the Texas Code Construction Act, Senate Bill 1102 is the controlling legislation. The state agency also suggested that House Bill 1865 requires the proposed rules to be subject to Article 3.50-6, Texas Insurance Code, and that the rules do not refer to Article 3.50-6. The ERS responded that House Bill 1865 does not directly address rules adopted by the ERS. Rather, House Bill 163 requires the rules to be subject to Article 3.50-6 and, in response, the ERS has amended the definition of ALB in the rules to refer to Article 3.50-6. The agency also suggested that the rules define "terminal illness" and, in response, the ERS has amended the rules to define "terminal condition". In response to the agency's suggestion that the rule proposed at 34 TAC §81.7(j) be clarified to make ALB available to a retiree whose terminal condition began before retirement, the ERS amended the proposed rule to so clarify. The state agency recommended that the rules be amended to clarify that the amount paid out as an accelerated benefit will be deducted from the amount otherwise payable as a death benefit, and the ERS has amended the proposed rule to so clarify. Finally, in response to the state agency's comment that Senate Bill 1102 provides that the trustees may provide ALB without increasing the cost of providing the benefit, and its recommendation that the rules clarify whether there are any special premiums, charges or fees associated with exercising the ALB option, the ERS noted that while an administrative fee will be charged for handling each ALB application, the ERS will absorb the cost and no fee will be passed along to the insured. Because no fee or special premium will be charged the insured at this time, but the ERS reserves the right to adopt a fee or surcharge in the future if necessary, the ERS responded that it believes it is best not to amend the proposed rules at this time to address a matter which is moot.

The ERS agreed with the legislator's comment that the rule should define "terminal illness" and included a definition of "terminal condition" in the rules under the definition of ALB. In response to the state legislator's comment that the proposed rules do no permit annuitants to participate in accelerated life benefits in conflict with House Bill 163, the ERS responded that it was unable to do so pursuant to the terms of Senate Bill 1102. Senate Bill 1102 prohibits making ALB available to annuitants and is, therefore, in direct conflict with House Bill 163. The ERS determined that pursuant to the Texas Code Construction Act, Senate Bill 1102 is the controlling legislation.

Comments were received from the Texas Health Maintenance Organization Association, from the Texas Department of Insurance, and from the Honorable Representative Glen Maxey, Texas House of Representatives, but the comments were instructive or technical in nature and could not be characterized as either "for" or "against" the proposed rules.

These amendments are adopted under Insurance Code, Article 3.50-2, §4A, which provides the ERS with the authority to promulgate all rules and regulations necessary to implement and to administer the Uniform Group Insurance Program and the Flexible Benefits (Cafeteria Plan) Program.

§81.1. Definitions.

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

Accelerated Life Benefit - An amount of Term Life Insurance requested by the insured employee and approved by the carrier to be paid in advance of the employee's or covered dependent's actual death in accordance with the terms of the Group Term Life Plan, as permitted by Article 3.50-6, Texas Insurance Code. Accelerated Life Benefit payment can be requested only upon diagnosis of a terminal condition and only once during the lifetime of the employee or covered dependent. A terminal condition is a non-correctable health condition that with reasonable medical certainty will result in the death of the insured within 12 months.

Dependent - The spouse of an employee or retiree and unmarried children under 25 years of age, including:

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

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) any such child, regardless of age, who lives with or whose care is provided by an employee or retiree on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine. Mentally retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self-sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25. As a condition to the continued coverage of a child as a mentally retarded or physically incapacitated dependent beyond the age of 25, the carrier or health maintenance organization shall have the right to require periodic certification of the child's physical or mental condition but not more frequently than annually following the child's attainment of age 25.

Evidence of insurability - Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) of this title (relating to Enrollment and Participation).

Former COBRA unmarried child - a child of an employee or retiree who is unmarried; whose UGIP coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) reinstates UGIP coverage.

Insurance premium expenses - Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the Program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the plan include out-of-pocket premium for group term life, health (including HMO premiums), accidental death and dismemberment, dental, and long and short term disability, but does not include out-of-pocket premium for dependent term life.

Preexisting condition - Any injury or sickness, for which the employee received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(h) of this title must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

Premium conversion plan - A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

§81.3. Administration.

(a) Group Benefits Advisory Committee (GBAC).

(1) The GBAC is established by the Act, §18, as amended. Its membership shall be composed as defined in the Act. The Executive Director of the Employees Retirement System of Texas shall establish procedures for the determination of the committee's membership, terms of office, and representation of the applicable state agencies and institutions of higher education, in accordance with the Act.

(2)-(6) (No change.)

(7) The Executive Director of the Employees Retirement System of Texas shall file a notice of the GBAC's meetings with the secretary of state for publication in the Texas Register.

(8) The Executive Director shall be the custodian of the minutes of the GBAC's meetings and will have those minutes available for public inspection at the offices of the Employees Retirement System of Texas during normal working hours.

(b) (No change.)

(c) Health maintenance organizations.

(1) The board may approve a health maintenance organization (HMO) to offer a health benefits plan to participants in the Program. The board may:

(A) utilize a bidding process to approve one or more HMOs in areas of the state determined by the board to be regional bidding areas (RBAs);

(B) utilize an application process to approve one or more HMOs in areas of the state determined by the board to be non-bidding areas;

(C) determine the criteria to be used to approve the HMOs for the RBAs and non-bidding areas;

(D) determine the number of HMOs to approve in each RBA and non-bidding area; and

(E) determine the length of the contracts with the approved HMOs.

(2) In order to seek approval, an HMO must:

(A) submit an application to provide health benefits in the areas within the State of Texas determined by the board to be non-bidding areas;

(B) submit a proposal, in response to a request for bid, in the format determined by the system for one or more of the designated RBAs; or

(C) submit application(s) and bid(s).

(3) An HMO seeking board approval in response to a request for bid in one or more of the RBAs, must satisfy the following conditions:

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas.

(B) The HMO must have been providing services in the RBA for at least 6 months prior to September 1 of the fiscal year in which the bid response is due to be filed with the system. Also, the HMO must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants.

(C) The HMO must submit the bid, with rates, to the board at the time and in the format prescribed by the system. Once adopted by the board, the rates may not be modified without the approval of the board. A request for expansion of a non-contiguous service area, as described in this section, shall require a separate application.

(D) The HMO agrees to the provisions contained in the contract between the system and the HMO as adopted for the entire time specified in the contract.

(E) The HMO must provide standardized benefits as described in the contract between the system and the HMO. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director of the system.

(F) If an HMO, approved by the board, fails to maintain compliance with the contract, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract.

(G) An HMO that loses its state license will automatically become ineligible to offer its health benefits plan to participants in the Program.

(4) An HMO, seeking board approval in response to an application in one or more of the non-bidding areas, must satisfy the following conditions:

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas.

(B) The HMO must have been providing managed care services in the area for which the application is made for at least 6 months prior to September 1 of the fiscal year in which the application is due to be filed with the system. Also, the HMO must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants.

(C) The HMO must submit the application, with rates, to the board at the time and in the format prescribed by the system. Once adopted by the board, the rates may not be modified without the approval of the board.

(D) The HMO agrees to the provisions contained in the contract between the system and the HMO as adopted for the entire time specified in the contract.

(E) The HMO must provide standardized benefits as described in the contract between the system and the HMO. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director of the system.

(F) If an HMO, approved by the board, fails to maintain compliance with the contract, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract.

(G) An HMO that loses its state license will automatically become ineligible to offer its health benefits plan to participants in the insurance program.

(d) Funding.

(1) (No change.)

(2) Payment of premiums. Deductions from monthly compensation or annuities and direct payment of premiums are two methods of payments used for the employee's, retiree's, or other participant's share of premiums.

(A) Employee deductions. An employee or retiree who applies for coverage for which the monthly premium exceeds the state or employing department and the system contributions must authorize in writing on a form prescribed by the system a deduction from his or her monthly compensation or annuity to pay the difference. If an employee's monthly compensation or retiree's annuity is insufficient to provide for the appropriate deduction, the employee or retiree must pay premiums directly as explained in subparagraph (B)(i) of this paragraph. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages not fully funded by the state contribution. A person entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in §81.7(l)(2)(B) of this title.

(B) Direct payment of premiums. Persons who are eligible participants in the program and who are not on a payroll or who are not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted or whose salary or annuity are insufficient to allow for a full required deduction must pay premiums directly as indicated in the following.

(i) A person who is eligible to receive but is not actually receiving a TRS annuity, a retiree who is eligible to receive an annuity whose benefit is assigned to an alternate payee, a person whose retirement annuity is temporarily suspended, a person whose annuity is insufficient, a person who is receiving or eligible to receive an annuity under the ORP, a former elected official, a former employee of the legislature, a surviving spouse and/or dependent child/children of a deceased employee or retiree, and a former COBRA unmarried child must pay monthly premiums in advance directly to the system. A person in a leave without pay status, a person whose salary is insufficient, and a non-salaried board member must pay monthly premiums in advance through the employee's employing department. Premium payments are due on the first day of the month covered and must be postmarked or received by the system or the employing department, whichever is appropriate, within 30 days of the due date to avoid cancellation of coverage. Failure to make the required premium payment by the due date will result in cancellation of all coverages not fully funded by the state contribution, if applicable. A person entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in §81.7(l)(2)(B) of this title.

(ii) A person who continues group health and dental benefits as provided in §81.5(k) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person will be 102% of the rates charged for other participants in the same coverage category and with the same plan. All premiums due for the election/enrollment period must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation of coverage enrollment form. Subsequent premiums are due on the first day of the month covered and must be postmarked or received by the Employees Retirement System within 30 days of the due date to avoid cancellation of coverage.

(iii) A person who continues group health and dental benefits as provided in §81.5(k)(3) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person for each month of coverage after the 18th month of coverage will be 150% of the rates charged for other participants in the same coverage category and with the same plan. All premiums are due on the first day of the coverage month and must be postmarked or received by the Employees Retirement System of Texas within 30 days of the due date to avoid cancellation of coverage.

§81.5. Eligibility.

(a) Full-time employees. A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for

coverage and premium conversion on the first day he or she begins active duty with the state. For an elected or appointed officer, the first day of active duty shall be the day he or she takes the oath of office.

(b)-(c) (No change)

(d) Dependents of employees and retirees. The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order. A newborn natural child is covered automatically on date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active employees or covered as dependents of an active employee, the retiree may add dependent life coverage upon an eligible dependent's termination of employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. A dependent may not be covered by more than one employee or retiree for the same coverage. Double coverage is not permitted for any participant in the program.

(e) Former COBRA unmarried children. A former COBRA unmarried child is eligible for the health and dental coverages in which they were enrolled upon expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public law 99-272.

(f) Surviving dependents.

(1) The surviving spouse of a retiree or the surviving spouse of an active employee is eligible to continue coverage in the health and dental benefits plans in which the surviving spouse was enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including 3 years of service as an eligible employee with a Program participating department, at the time of death. A surviving spouse who is also a state retiree or state employee shall not be eligible for surviving spouse benefits as long as he or she is eligible for coverage as an employee or retiree. Participants continuing coverage as surviving spouses are not eligible for life insurance coverages.

(2) Dependent children of a deceased employee or retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had, at the time of death, at least 10 years of service credit, including 3 years of service as an eligible employee with a Program participating department, as long as the surviving spouse is eligible and continues to participate in the program. Dependent children of deceased employees or retirees will be considered as dependents of the deceased employee's or retiree's surviving spouse for purposes of the program. Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(3) Dependent children of a deceased employee/retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including 3 years of service as an eligible employee with a Program participating department, at the time of death. A surviving dependent child may continue such coverage until the dependent child becomes ineligible as defined in §81.1 of this title (relating to Definitions). Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(4) A surviving spouse of a dependent child of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a violent death in the course of performance of duty is eligible to continue or enroll in health and dental coverages. A surviving spouse or natural or adopted children eligible under this section may enroll within 90 days from the date of death. Other eligible dependent children may continue health and dental coverages in effect on the date of death.

(g) Retiree under ORP. A retiring member of the ORP is eligible to remain in the insurance program if he or she becomes an annuitant of the ORP and the member's age and amount of service on which the annuity is based is such that the retiree meets the age and length-of-service requirements used by the Teacher Retirement System for regular service retirements. A retiring member will remain eligible for coverage in the program as long as he or she would have been eligible to receive an annuity had his or her membership been in the Teacher Retirement System rather than the ORP.

(h) Disability retirement. An applicant who is approved for disability retirement is entitled to retiree insurance coverages as provided in §81.7(c) of this title (relating to Enrollment and Participation). An ORP participant granted ORP disabled retiree status in the program, as established by the disability test used by the system, is eligible to remain in the program for the amount of time the person would be eligible for benefits had retirement coverages been under the Teacher Retirement System of Texas. Initial or continued eligibility for insurance coverage for an ORP disabled retiree will be determined by the system under the following provisions.

(1) An ORP participant is eligible for ORP disabled retiree status in the program if the ORP participant is not otherwise eligible to participate in the program as an employee or retiree and is certified by a licensed physician designated by the system as disabled as provided in paragraph (2) of this subsection. An ORP participant may apply for disabled retiree status in the program by filing a written application for ORP disabled retiree status in the program or having an application filed with the system by the ORP participant's spouse, employer, or legal representative. In addition to an application for ORP disabled retiree status in the program, an ORP participant must file with the system the results of a medical examination of the ORP participant. After an ORP participant applies for ORP disabled retiree status in the program, the system may require the ORP participant to submit additional information about the disability. The system will prescribe forms for the information required by this section.

(2) If a licensed physician designated by the system finds that the ORP participant is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the physician will certify disability. The Executive Director is authorized to approve ORP disabled retiree status in the program after a certification of disability is made. Once each year during the first five years after an ORP participant enrolls in

the program as an ORP disabled retiree, and once in each three-year period after that, the system may require an ORP disabled retiree to undergo a medical examination by a physician the system designates. If an ORP disabled retiree refuses to submit to a medical examination as provided by this section, the system will suspend the ORP disabled retiree's enrollment in the program until the ORP disabled retiree submits to an examination. The system will terminate the ORP disabled retiree's coverage in the program and notify the ORP participant in writing if:

(A) the system concurs with a certification issued by the designated physician which finds that an ORP disabled retiree is no longer mentally or physically disabled from the further performance of duty; or

(B) an ORP disabled retiree refuses for more than one year to submit to a required medical examination.

(3) The effective date of coverage for an ORP disabled retiree in the program is the first of the month following the date the application for ORP disabled retiree status in the program is received by the system, or the first of the month following the date employment is terminated, whichever is later.

(i) Former members of the legislature. On application to the trustee and on arrangement for the payment of contributions, a person who has at least eight years of creditable legislative service, as defined in the Government Code, §812.002, on ending his or her service in the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, former members of the legislature will be subject to the same eligibility rules and effective dates that apply to active members of the legislature.

(j) Former employees of the legislature. On application to the trustee and on arrangement for the payment of contributions, a person who has at least 10 years of creditable service in the system, as defined in the Government Code, §812.003, as an employee of the legislature, on ending his or her service for the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, a former legislative employee will be subject to the same eligibility rules and effective dates that apply to an active employee of the State of Texas.

(k) Continuation of health and dental coverages only for certain spouses and dependent children of employees/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272).

(1) The surviving spouse and/or dependent child/children of a deceased employee or retiree who are not eligible to continue coverage under the provisions of the Act or subsection (f) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, and who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 Health Insurance Portability and Accountability Act (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of death of the employee/retiree. A formal election must be made to continue coverage by the surviving spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(2) An employee whose employment has been terminated voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided for in §81.7(l)(2)(A) of this title, except for those persons not eligible pursuant to §81.11(c) of this title (relating to Termination of Coverage), and/or his or her spouse and/or dependent child/children who are not eligible to continue coverage under the provisions of the Act or subsection (h) or (i) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 18 months the health and dental coverages only without the basic term life that were in effect immediately prior to the date of the loss of coverage. A formal election must be made to continue coverage by the employee and/or his or her spouse and/or dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(3) If an employee, spouse, or dependent child is determined by the Social Security Administration to have been disabled before or during the first 60 days of continuation coverage, all covered individuals may continue health and dental coverages extended up to an additional 11 months, for a total of 29 months. Notification of the Social Security Administration's determination must be received by the system before the end of the original 18 months of continuation coverage. Continuation coverage will be canceled the month that begins more than 30 days after the date the Social Security Administration determines that the participant is no longer disabled.

(4) A spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children who are not otherwise eligible to continue coverage under the provisions of the Act or subsection (d) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who are covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-912 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date the divorce decree is signed. The employee/retiree or the divorced spouse or the divorced spouse's dependent child/children must notify the system through the employing department or retiree benefits coordinator of the divorce within 60 days from the date the divorce decree is signed. A formal election must be made to continue coverage by the divorced spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(5) A dependent child under 25 years of age who marries, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who are covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the marriage. The married child or the employee/retiree must notify the system through the employing department or retiree benefits coordinator of the marriage within 60 days from the date of the marriage. A formal election must be made

by the married child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(6) A dependent child who has attained 25 years of age, who is not otherwise eligible to continue coverage indefinitely under the provisions of the Act or subsection (d) of this section, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who is covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the child's 25th birthday. The child or employee/retiree must notify the system through the employing department or retiree benefits coordinator within 60 days of the child's 25th birthday. A formal election must be made by the 25-year-old child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(7) Extension of continuation of coverage for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (2) of this subsection is governed by the following provisions.

(A) The surviving spouse and/or dependent child/children of a deceased former employee whose death occurred during the period of continuation coverage, who satisfy the provisions of paragraph (1) of this subsection and who notify the Employees Retirement System within 60 days of the date of death of the former employee are entitled to a total of 36 months of continuation coverage.

(B) A spouse who is divorced from a former employee during the period of continuation coverage and/or the divorced spouse's dependent child/children who satisfy the provisions of paragraph (4) of this subsection are entitled to a total of 36 months of continuation coverage.

(C) A dependent child under 25 years of age who marries during the period of continuation coverage and who satisfies the provisions of paragraph (5) of this subsection is entitled to a total of 36 months of continuation coverage.

(D) A dependent child who attains the age of 25 years during the period of continuation coverage and who satisfies the provisions of paragraph (6) of this subsection is entitled to a total of 36 months of continuation coverage.

(E) An employee, spouse, or dependent child determined by the Social Security Administration to be disabled at the time of termination of the employee's employment and who satisfies the provisions of paragraph (3) of this subsection is entitled to a total of 29 months of continuation coverage.

(F) No person shall be allowed to continue health and dental coverages under the provisions of this subsection for more than 36 months.

(8) A person who continues benefits under the provisions of paragraphs (1)-(7) of this subsection may change coverage levels or plans during the continuation period on the same basis as an employee/retiree participant, provided, however, that health and dental coverages which are canceled during the continuation period may not be reestablished.

(9) In all situations deemed applicable by the Employees Retirement System where state or federal laws or regulations mandate specific terms or provisions which are omitted or conflict with specific terms or provisions of the group contracts or trustees' rules, the appropriate contracts and rules shall be interpreted and administered to comply with such laws or regulations.

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee, other than a part-time state agency employee, will automatically be enrolled in the basic plan of health and life insurance, effective on his or her first day of active duty. Any employee, who is eligible and enrolled in the program, is eligible to participate in premium conversion and shall be enrolled automatically in the premium conversion plan. To enroll eligible dependents, elect to enroll in an approved HMO or in HealthSelect Plus, elect optional coverages, and/or elect not to participate in premium conversion, the employee must complete an enrollment form on the first day of active duty or within 30 days from that date. The employee may decline any and all coverages in the program or participation in premium conversion by completing an enrollment form on or before the first day of active duty.

(2) An enrollment form for coverages or premium conversion election to be effective on the day the employee begins active duty must be completed and signed on or before that day. Coverages or premium conversion elections for which the enrollment form is completed and signed after the first day of active duty and within 30 days after that day will be effective on the first day of the month following the signature date on the enrollment form. Enrollment forms completed and signed after the first 31 days will be governed by subsection (h) of this section.

(3) An employee's election to or not to participate in the premium conversion plan shall be irrevocable for the plan year, unless there is a change in family status as defined in subsection (h)(1) of this section and the change is consistent with the event.

(4) An employee who continues to remain eligible to participate in premium conversion shall be enrolled automatically for subsequent plan years unless the employee specifically declines participation in writing during the annual enrollment period or under the change in family status rules.

(5) An employee who is ineligible to participate, or who is eligible and elects not to participate, in premium conversion and who becomes or remains eligible to participate in a subsequent plan year will continue to not participate in premium conversion unless the employee completes a new enrollment form during the annual enrollment period or under the change in family status rules and elects to participate.

(6) Coverages for dependents of an employee will be effective on the same day the employee's coverage becomes effective if an enrollment form is completed and signed on or before the effective date of the employee's coverage. If the enrollment form is completed and signed within 30 days after the employee's effective date, the dependent's coverage will be effective on the first day of the month following the signature date on the enrollment form. Coverage for a newly eligible dependent, other than a dependent referred to in paragraphs (7) and (9) of this subsection, will be effective on the date the person becomes a dependent if an enrollment form is completed and signed on or within 30 days after the date the dependent first becomes eligible. If the enrollment form is completed and signed more than 30 days after the employee's effective date or the date the dependent is first eligible, as the case may be, the enrollment form

will be governed by the rules in subsection (h) of this section. The requirement that an enrollment form must be completed and signed within 30 days after a dependent first becomes eligible is waived if the level of health, dental, and/or life coverages were in effect prior to the acquisition of the newly eligible dependent; however, an enrollment form must be completed before verification of coverage will be provided to the carrier(s).

(7) A newborn natural child will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree.

(A) If there are no other dependents covered at the time of birth, the newborn natural child will be automatically covered in the same health plan in which the employee or retiree is then covered. Unless not in compliance with subsection (h) of this section, to continue coverage for more than 30 days after the date of birth, an enrollment form for health coverage must be submitted within 30 days after the date of birth.

(B) If health, dental, and/or life coverages for dependent children were already in effect, an application to add a subsequent newborn natural child must be completed before verification of coverage for the newborn dependent will be provided to the carrier.

(8) The effective date of a newborn natural child's life and AD&D insurance will be the 14th day after the date of birth, unless the newborn natural child is then confined to a hospital or other institution for medical care; in which case, the newborn natural child's life and AD&D insurance coverage will become effective on the day after the day the newborn natural child is released from the hospital or institution. The effective date of all other eligible dependents' life and AD&D insurance coverages will become effective as stated in paragraph (6) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, the life and AD&D insurance coverage will become effective on the day after the day the dependent is released from the hospital or institution.

(9) An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order.

(10) The effective date of HealthSelect of Texas coverage for an employee's or retiree's dependent, other than a newborn natural child, will be as stated in paragraph (6) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, HealthSelect of Texas coverage will be effective on the day after the day the dependent is released from the hospital or institution.

(b) Part-time employees. A part-time employee is not automatically covered but must complete an application form provided by the Employees Retirement System, authorizing necessary deductions for premium payments for elected coverage and electing to participate or not to participate in premium conversion. This form must be submitted to the Employees Retirement System through his or her employing agency on or before the employee's first day of active duty in order for coverage to be effective on that day. If not submitted on the first day of active duty, but within 30 days thereafter, coverage will be effective on the first day of the month following the date of application. All rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to a part-time employee.

(c) Retirees and their dependents.

(1) Provided the required premiums are paid or are deducted, an employee's health, dental and term life insurance coverages (including eligible dependent coverages) may be continued upon retirement provided the employee was insured in the program for such benefits immediately preceding the first day he or she becomes an annuitant. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance contract as a retiree. All other coverages in force for the active employee, but not available to the retiree, will automatically be discontinued concurrently with the commencement of retirement status.

(2) If a retiree was not covered as an active employee immediately prior to becoming an annuitant, the retiree will be automatically enrolled in the basic retiree plan. Coverage for an eligible dependent of a retiree will be effective on the same day the retiree's coverage becomes effective if an application is received on or before the retiree's effective date of coverage. Applications received after the first 31 days will be governed by subsection (h) of this section.

(3) An application to delete optional life coverages or to change health coverage will be effective on the day the member becomes an annuitant if the application is postmarked or received by the Employees Retirement System on or before the effective date of retirement, unless other coverages are in effect at that time. If other coverages are in effect at that time, the deletion or change in coverage will become effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. If the application is received after the date the member becomes an annuitant, but within 30 days after the date the member becomes an annuitant, the deletion or change of coverage will become effective the first day of the month following the date the application for deletion or change is received, unless other coverages are in effect at that time. If other coverages are in effect at that time, the deletion or change in coverage will become effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. All other enrollment rules stated in subsections (a), (g), and (l) of this section apply to retirees.

(d) Surviving dependents. A surviving spouse and dependents of a deceased employee who, at the time of death, had at least ten years of service credit, including three years of service as an eligible employee with a Uniform Group Insurance Program participating department, and who met the program eligibility requirements in accordance with the Act may continue coverage as provided in §81.5(f) of this title (relating to Eligibility). A surviving spouse and dependents of a deceased retiree may continue coverage as provided in §81.5(f) of this title. A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(d)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(d)(2)(B) of this title. The surviving spouse or eligible dependents must apply to continue coverage for himself or herself and dependents within 30 days after notification in writing of eligibility to make application.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application for coverage within 30 days from the date the notice of eligibility was mailed by the system. Coverage will begin the first of the month following the month in

which continuation coverage ends. Premium payments may be made as provided in §81.3(d)(2)(B) (relating to Administration).

(f) Premium conversion plans.

(1) Pursuant to the premium conversion plan, a participant may elect to pay certain insurance premium expenses for health, disability, accidental death and dismemberment, dental, and group term life with pre-tax dollars. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance premium expenses under this section shall be the amount required to pay the participant's portion of the premiums for coverage under each type of insurance included in the plan.

(g) Special rules for additional or alternative coverages.

(1) An employee/retiree must be enrolled in health coverage provided by the program to apply for any optional coverages. Only an employee or retiree or a former officer or employee specifically authorized to join the program may apply for optional coverages.

(2) An eligible participant in the Program and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the letter of agreement with the HMO.

(3) An eligible participant in the Program and eligible dependents may participate in HealthSelect Plus if they reside in the approved service area of HealthSelect Plus.

(4) An eligible participant in the Program electing optional additional coverage and/or HMO or HealthSelect Plus coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (l)(2)(B) of this section.

(5) An eligible participant in the Program enrolled in an HMO whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible or to HealthSelect Plus (if the participant is eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is eligible to enroll in another approved HMO. The effective date of the change in coverage for the eligible participant shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the department;

(C) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(6) An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board;

(B) enroll in HealthSelect of Texas without evidence of insurability or in HealthSelect Plus if the participant is eligible, provided the participant is not eligible to enroll in another approved HMO. The effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in HealthSelect of Texas without evidence of insurability or in HealthSelect Plus, if the participant is eligible. The effective date of the change in coverage will be determined by the board.

(7) An employee who, during the annual enrollment period prior to the beginning of a plan year or within 30 days from their first active duty date, makes an application to increase insurance coverage under the Program (the premium for which will exceed the State of Texas' and the institution's total contributions for premium costs) may elect not to participate in premium conversion by completing and submitting an enrollment form during the annual enrollment period or within 30 days from the first active duty date.

(h) Changes in coverages beyond the first 31 days of eligibility.

(1) The premium conversion plan's affect on ability to change insurance coverage. An employee participating in the premium conversion plan may not change coverages during the plan year, unless there is a change in family status and the change is consistent with the event. A change in family status includes marriage, divorce, death of a dependent; birth or adoption; termination or gaining employment by a dependent; change from full-time to part-time or part-time to full-time employment status by employee or dependent; significant change in health insurance coverage attributable to dependent gaining employment; employee's dependent regains Program eligibility; employee acquires a Program eligible dependent; employee is court ordered to provide medical support for dependent child; dependent goes on or returns from leave without pay; dependent involuntarily loses health coverage or dependent child loses dependent eligibility for other health coverage; dependent gains or loses Medicaid eligibility; Program covered dependent loses Program eligibility; Program covered dependent becomes eligible for Program as a retiree; or, a dependent gains or loses eligibility for Medicare.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an

applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible participant who wishes to add or increase coverage, add eligible dependents to HealthSelect of Texas, or change coverage from an HMO or HealthSelect Plus to HealthSelect of Texas more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV Optional Term Life insurance;

(B) employees who wish to enroll in or increase Optional Term Life insurance, Short Term Disability, or Long Term Disability more than 30 days after the initial date of eligibility;

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas more than 30 days after the initial date of eligibility, except as provided in subsections (a), (g)(5)-(6), and (h)(7)(11) of this section; or

(D) employees enrolled in the program whose coverage was dropped or canceled, except as provided in subsection (k)(3), (4), and (6) of this section.

(5) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO or HealthSelect Plus coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) when a dependent terminates employment, when a dependent loses health coverage for reasons other than voluntary cancellation, when a dependent changes employment status, when an employee or retiree divorces, or when a spouse dies, and as provided in paragraph (13) of this subsection, unless not in compliance with paragraph (1) of this subsection. The effective date of coverage will be the first day of the month following the event date if an enrollment form is completed and signed on or within 30 days following the date the dependent becomes eligible under this rule.

(6) An employee, who is otherwise eligible to participate in the Program but who did not decline participation in premium conversion prior to the beginning of a plan year or who elected to participate and who has a change in family status as defined in paragraph (1) of this subsection after the beginning of the plan year, may elect not to participate in premium conversion, if the change is consistent with the change in family status, by completing and submitting an enrollment form within 30 days from the date the family status change occurs.

(7) An eligible participant, who is enrolled in an approved HMO and permanently moves his or her place of residence out of that HMO's service area to a location where the participant is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in HealthSelect of Texas or HealthSelect Plus, if the participant is eligible. Coverage in the HMO will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and the coverages in HealthSelect of Texas or HealthSelect Plus will become effective on the day following the day HMO coverage is canceled. The evidence of insurability provision shall not apply in these cases.

(8) An eligible participant, who is enrolled in HealthSelect Plus and permanently moves his or her place of residence out of the HealthSelect Plus service area will be enrolled in HealthSelect of Texas, whether or not an HMO is available. Coverage in HealthSelect Plus will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and coverage in HealthSelect of Texas will become effective on the day following the day HealthSelect Plus coverage is canceled. The evidence of insurability provision shall not apply.

(9) When a covered dependent of an eligible participant permanently moves out of the participant's HMO service area, the participant must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the participant's HMO service area:

(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, or §81.11(a)(2) (relating to Termination of Coverage); or

(B) enroll in HealthSelect of Texas or HealthSelect Plus, if the participant and all covered dependents are eligible. The evidence of insurability provision shall not apply.

(10) When a covered dependent of an eligible participant permanently moves out of the HealthSelect Plus service area, the participant must make one of the following elections to become effective on the first day of the month following the date the dependent moved out of the HealthSelect Plus service area:

(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, and §81.11(a)(2) (relating to Termination of Coverage); or

(B) change coverage to HealthSelect of Texas. The evidence of insurability provision shall not apply.

(11) An eligible participant will be allowed an annual opportunity to make changes to their coverages and premium conversion election, if applicable.

(A) Persons will be allowed to:

(i) change from one HMO to another HMO;

(ii) change from an HMO to HealthSelect Plus;

(iii) change from HealthSelect Plus to an HMO;

(iv) change from HealthSelect of Texas to HealthSelect Plus;

(v) change from HealthSelect of Texas to an HMO;

(vi) change from HealthSelect Plus to HealthSelect of Texas;

(vii) select in-area or out-of-area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;

(viii) enroll in a dental plan;

(ix) change dental plans;

(x) enroll eligible dependents in an HMO, HealthSelect Plus, or dental coverage;

(xi) enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled in HealthSelect of Texas and does not reside in any HMO service area;

(xii) enroll themselves and their eligible dependents in an eligible HMO, in HealthSelect Plus (if they are eligible), and in a dental plan from a declined or canceled status; or

(xiii) enroll or cancel enrollment in the premium conversion plan.

(B) Surviving dependents and former COBRA unmarried children are not eligible for the provisions in subparagraph (A)(vii), (viii), (x), or (xi) of this paragraph.

(C) Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1. The evidence of insurability provision shall not apply to persons changing from HealthSelect Plus to HealthSelect of Texas.

(D) Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to change their enrollment in the premium conversion plan and apply through evidence of insurability for coverage within the first 30 days after return to active duty.

(12) Unless not in compliance with paragraph (1) of this subsection and §81.11(a)(2) (relating to Termination of Coverage), an eligible participant who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the signature date of the enrollment form.

(13) An eligible dependent spouse or child who has health coverage as an employee under the program becomes eligible for coverage as a dependent on the day following termination of employment. Eligible dependent children who have health coverage in the program as dependents of an employee who terminates employment also become eligible for coverage on the day following termination of employment. In order to be eligible for coverage, dependents must meet the definition of dependent contained in §81.1 of this title (relating to Definitions) and be enrolled for coverage by the employee of whom they are the eligible dependent and who is enrolled for health coverage under the program. The effective date of coverage will be the first day of the month following termination of employment if an enrollment form is completed and signed on or within 30 days following the date the dependent(s) become eligible under this rule.

(14) Notwithstanding the effective dates of coverages, as defined in paragraphs (3)-(12) of this subsection, an eligible participant in the program may complete an enrollment form or enrollment forms during the annual enrollment period to make coverage changes, as determined by the trustee, to be effective September 1.

(i) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees who enroll in Disability coverage. The exclusion for benefit payments shall not apply after the first six consecutive months that the employee has been actively at work or after the employee's disability coverage has been continuously in force for 12 months for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to:

(1) a medical condition resulting from congenital or birth defects; or

(2) an individual returning to state employment in accordance with the conditions described in subsection (k)(3) of this section.

(j) Special provisions relating to term life benefits

(1) An employee who is enrolled in the Group Term Life Plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the group term life insurance plan in effect at that time. A retiree who is enrolled in the plan is eligible to file a claim for an accelerated life benefit for himself or his covered dependent only if the retiree or dependent was determined, in a written statement by his attending physician, prior to the effective date of the retirement, to have had a terminal condition as defined in these rules. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the Group Term Life Plan.

(2) An employee or retiree who is enrolled in the Group Term Life Plan may make an irrevocable beneficiary designation and enter into a viatical settlement in accordance with the terms of the group term life insurance plan in effect at that time.

(k) Reinstatement in the program.

(1) Unless specifically prohibited by these sections, paragraph (2) of this subsection, or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an enrollment form for the coverages. The enrollment form must be submitted on the first day the employee returns to active duty, and, unless the employee completes the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the employee returns to active duty. Dependents acquired during the break in employment may be added on the enrollment form. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate enrollment form during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of signature on the enrollment form. If the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(2) A terminated employee who returns to state or institution of higher education employment, or an employee who returns to active duty from an approved leave of absence without pay,

or transfers from one state agency to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain for the remainder of the plan year the premium conversion election in existence on the employee's last active duty date, unless an eligible change in family status occurred in accordance with paragraph (h) of this section.

(3) An employee who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and who is in a military leave without pay status or who must terminate employment as the result of an assignment to active military duty may, upon return to active employment, reinstate all program coverages that were in effect immediately prior to the commencement of active military duty, as long as the return to active employment occurs within 90 days of the release from active military duty. An employee may also reinstate the coverage of the employee's dependent, who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and whose coverage is terminated as the result of an assignment to active military duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. The enrollment form to reinstate such coverages must be completed and signed during the 30 days following the day the employee returns to active employment. In the case of the dependents, the enrollment form to reinstate such coverages must be completed and signed within 30 days following the release from active duty. Enrollment forms for coverages to be effective on the day the employee returns to active employment must be completed and signed on or before the first day of the return to active employment. Coverages for which the enrollment form is completed and signed after the first day of the return to active state employment and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(4) Employees whose coverages were canceled during a period of leave without pay due to a certified work-related disability may, upon return to active duty status, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, except as provided in §81.11(c)(4) of this title (relating to Termination of Coverage), and provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty. Evidence of insurability will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. Coverages applied for on the first day of return to active duty will be effective on that day unless the employee completes and signs the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty. Coverages applied for after the first day of return to active duty and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(5) Employees whose coverages were cancelled during a period of leave without pay as a result of the Family and Medical Leave Act of 1993 may, upon return to active duty, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty. To reinstate cancelled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were cancelled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement.

(6) Employees whose coverages were canceled on or after January 31, 1995, during a period of leave without pay, except as provided in paragraphs (3)-(5) of this section, shall upon return to active duty be enrolled in the basic plan, provided the employee is eligible for the full state contribution. Reinstatement of canceled coverages must be in compliance with subsection (h) of this section.

(l) Continuing coverage in special circumstances.

(1) Continuation of health, dental, and optional coverages for terminating employees. A terminating employee is eligible to continue all coverages through the last day of the month in which employment is terminated.

(2) Continuation of health, dental, and life coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title (relating to Administration). Disability income coverage for an employee in a leave without pay status will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the department as approved leave without pay.

(B) An employee whose leave without pay is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of leave without pay. The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages except for member only health and basic life coverage. The employee

will continue in the health plan in which he or she was enrolled immediately prior to the cancellation of all other coverages. If a premium beyond the state contribution for member only health and basic life coverage is owed, the employee must make the required payment of premiums directly to the employing department upon return to active duty.

(3) Continuation of health, dental, and life coverages for a former member or employee of the legislature. A former member or employee of the legislature, who is eligible to continue to participate in the program, must notify the system within 30 days after leaving office or employment of the employee's intent to continue the coverage in effect. Coverage will be canceled if a premium is not received within 30 days of the due date. A former member or employee of the legislature is not eligible to continue disability insurance coverage.

(4) Continuation of health, dental, and life coverages for a former judge. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the types and amounts of coverages, other than disability income, that were in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment. Disability income coverage during the period will be canceled on the first day of the month during which the former judge does not serve on a judicial assignment. To reinstate canceled disability income coverage once service on judicial assignments is resumed, a former judge must submit evidence of insurability acceptable to the system. If approved, disability income coverage will become effective on the first day of the month following the date approval is received by the employing department.

(5) Continuation of health and dental coverage for a surviving spouse and/or dependent child/children of a deceased employee or retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(k)(1) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all group insurance premiums due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(6) Continuation of health and dental coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided in paragraph (2)(A) of this section. An employee, his or her spouse and/or dependent child/children, who, in accordance with §81.5(k)(2) of this title, elects to continue health and dental coverages may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all group insurance premiums due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(7) Continuation of health and dental coverage for a spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children (not provided for by §81.5(a) of this title of an employee/retiree who, in accordance with §81.5(k)(4) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all group insurance premiums due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(8) Continuation of health and dental coverage for a dependent child under 25 years of age who marries. A dependent child under 25 years of age who marries and who, in accordance with §81.5(k)(5) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child's marriage occurred, provided all group insurance premiums due for the month in which the dependent child's marriage occurred and for the election/enrollment period have been paid in full.

(9) Continuation of health and dental coverage for a dependent child who has attained 25 years of age. A 25-year-old dependent child (not provided for by §81.5(d) of this title of an employee/retiree who, in accordance with §81.5(k)(6) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the employee/retiree attains 25 years of age, provided all group insurance premiums due for the month in which the dependent child attained age 25 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of health and dental coverages for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving spouse and/or dependent child/children of a deceased former employee, who, in accordance with §81.5(k)(7)(A) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(k)(7)(B) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child under 25 years of age who marries, who, in accordance with §81.5(k)(7)(C) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child marries.

(D) A dependent child who has attained 25 years of age, who, in accordance with §81.5(k)(7)(D) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 25.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means the continuation of only health and dental coverage benefits which meet the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the health and dental coverages, which, as of the time the coverage is being provided, are identical to the health and dental coverages provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(k)(3) of this title, the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(d)(2)(B)(ii) and (iii) of this title (relating to Administration);

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion;

(vii) the date on which the participant, covered under any other group health plan that subjects him or her to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), is no longer subject to the preexisting conditions limitation or exclusion in the other plan;

(viii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Premium requirements. The premium for a participant during the continuation coverage period will be 102% of the employee's/retiree's health and dental coverages only rate and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health and dental coverages only rate for the 19th through 36th months of coverage and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health and dental coverages only rate for the 19th through 29th months of coverage and is payable as provided in §81.3(d)(2)(B)(iii) of this title (relating to Administration).

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue coverage under the provisions of §81.5(k)(1)-(6) of this title (relating to Eligibility).

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues health and dental coverages for the maximum period as provided in subparagraph (B)(i)-(iii) of this section. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

§81.9. Grievance Procedure.

(a) Except for persons enrolled in an HMO, any person participating in the insurance program, who is denied payment of insurance benefits, may request the health carrier to reconsider the claim. Any additional documentation in support of the claim may be submitted with the request for reconsideration. If the claim is again denied, the claim, accompanied by all related documents and copies of correspondence with the insurance company, may be submitted by the person to the Executive Director of the Employees Retirement System of Texas for review. A request for review must be filed by the person in writing within 90 days from the date the insurance company formally denies the claim and mails notice of this denial and right of appeal to the person.

(b) Any person with a grievance regarding eligibility or other matters involving the program, including eligibility for participation in the premium conversion plan, may submit a written request to the Executive Director to make a determination on the matter in dispute.

(c) When the Executive Director reviews any matter arising under this section, all of the available information will be considered. When the Executive Director completes the review and makes a decision, all parties involved will be notified in writing of the decision.

(d) Any person or insurance company that does not accept the Executive Director's decision may appeal the decision to the board. A notice of appeal to the board must be filed in writing 30 days from the date the Executive Director's decision is mailed by certified mail.

(e) Appeals to the board will be processed under the provisions of Chapter 67 of this title (relating to Hearings and Disputed Claims), or the rules of the State Office of Administrative Hearings, when applicable, and Chapter 2001, Government Code.

(f) (No change.)

(g) In computing time under this section, the day after any mailing by the carrier or the Executive Director shall be counted as the first day of the time period. A document is considered to be filed with the Executive Director when it is received by the executive director or when it is postmarked, whichever is earlier.

§81.11. Termination of Coverage.

(a) Cancellation of coverage.

(1) Except as prohibited by §81.7(h)(1) of this title (relating to Enrollment and Participation) and paragraph (2) of this subsection, an employee, retiree, or surviving spouse may cancel any coverage in effect. Coverage will continue through the last day of the month in which the coverage is cancelled. Coverage canceled by a surviving spouse or dependent of a deceased retiree may never be reinstated.

(2) Court ordered health coverage for a dependent cannot be canceled unless the dependent is no longer eligible as a dependent as defined in §81.1 of this title, the court order is no longer valid, or comparable coverage has been obtained.

(3) Coverage for a dependent, who marries or attains age 25, shall be canceled as of the last day of the month following the date of marriage or attainment of age 25, as the case may be.

(4) Surviving spouse coverage for a person who becomes a state employee shall be canceled as of the effective date of coverage as an active employee. Surviving spouse coverage may be reinstated when the spouse terminates employment with the state.

(5) Coverage shall be canceled for non-payment of premium if a premium is not paid within 30 days of the date payment is due. Coverage will be canceled effective the last day of the month for which timely payment was made.

(b) (No change.)

(c) Expulsion from the Uniform Group Insurance Program.

(1) The board of trustees may expel any person participating in the Uniform Group Insurance Program who submits a fraudulent claim or otherwise defrauds or attempts to defraud any plan of benefits offered under the program, within the terms of the Insurance Code, Article 3.50-2, §13A.

(2) Any person with a grievance regarding eligibility or other matters involving the program may submit a written request to the Executive Director to make a determination on the matter in dispute.

(3) The Executive Director is authorized to call a hearing on behalf of the Board when he has reason to believe that a person may be subject to expulsion under this section and the Insurance Code, Article 3.50-2, §13A.

(4) Any hearing called pursuant to this section shall be a contested case under Government Code, Chapter 2001, and conducted in the manner prescribed by law and by Chapter 67 of this title (relating to Hearings and Disputed Claims) or the rules of the State Office of Administrative Hearings, when applicable. During such hearing, the standard of proof requiring a finding against the participant shall be the preponderance of evidence. At the time a case is assigned to a hearings examiner, no further claims will be paid until a finding has been made. When a finding has been made, all eligible claims will be processed subject to any offsets for overpayments made by the carrier.

(5) Any person expelled from the Uniform Group Insurance Program may not be insured under any health benefits plan offered by the program for a period of five years from the effective date of the expulsion.

(d) Coverage rescinded.

(1) The Executive Director may rescind any insurance coverage of a participant in the program, if the Executive Director determines that the coverage was obtained by a fraudulent act or by making a material misrepresentation or by supplying false information on any enrollment form or application for coverage or related documentation or in any communication.

(2) (No change.)

(3) The Executive Director also may deny any claim filed to obtain benefits from the fraudulently induced coverage.

(4) The Executive Director's decision to rescind insurance coverage or to deny a claim may be appealed to the board in accordance with §81.9 of this title (relating to Grievance Procedure).

This agency 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 January 26, 1998.

TRD-9801147
Sheila W. Beckett
Executive Director
Employees Retirement System
Effective date: February 16, 1998
Proposal publication date: November 7, 1997
For further information, please call: (512) 867–3336

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Chapter 87. Deferred Compensation

34 TAC §87.1, §87.17

The Employees Retirement System of Texas (ERS) adopts amendments to §87.1 and §87.17, concerning the deferred compensation program without changes to the proposed text as published in the December 5, 1997 issue of the *Texas Register* (22 TexReg 12023).

These rules are being amended due to changes in federal law. The amendments will update the requirements for distribution of deferred compensation funds to plan participants. Be referencing the relevant federal statute, the amendments increase the amount of an inservice distribution for certain eligible participants from $3,500 to $5,000.

No comments were received regarding adoption of these amendments.

The amendments are proposed under Government Code, §609.508, which provides the board of trustees the authority to adopt any rules necessary to administer the deferred compensation plan.

This agency 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 January 23, 1998.

TRD-9801102
Sheila W. Beckett
Executive Director
Employees Retirement System
Effective date: February 12, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 867–3336

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

Subchapter A. Program Planning

37 TAC §87.33

The Texas Youth Commission (TYC) adopts an amendment to §87.33, concerning surveillance and supervision levels in parole home placement, without changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11059).

The justification for amending the section is greater protection for the public.

The amendment will emphasize the surveillance aspects of the supervision levels of youth on parole status in the home or in home substitutes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children based on the level of children's needs and the degree of risk they present to the public.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800847
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 424–6244

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Subchapter B. Special Needs Offender Programs

37 TAC §87.71

The Texas Youth Commission (TYC) adopts an amendment to §87.71, concerning emergency mental health admission, without changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11060).

The justification for amending the section is a more efficient use of funds.

The amendment will add the local Texas Department of Mental Health and Mental retardation as an alternative placement resource for emergency psychiatric care.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.037, which provides the Texas Youth Commission with the authority to make use of law enforcement, detention, supervisory, medical, educational, correctional, and other facilities, institutions, and agencies in the state.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800850
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 424–6244

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Chapter 91. Program Services

Subchapter B. Education Programs

37 TAC §§91.41, 91.43, 91.45

The Texas Youth Commission (TYC) adopts amendments to §§91.41, 91.43, and 91.45, concerning education administra-

tion, basic education, and career and technology education, without changes to the proposed text as published in the December 26, 1997, issue of the *Texas Register* (22 TexReg 12707).

The justification for amending the sections is a more efficient use of state resources.

The amendments to §91.41 will clarify that youth in TYC operated institutions who are eighteen or younger will attend school unless they are at least 17 years old and have a GED or high school diploma. A TYC facility may receive a waiver from TYC administration to operate a school day of less than six hours but not less than four hours. Each teacher is scheduled for one period per day for preparation. The amendments to §91.43 requires that youth be enrolled in Texas Education Agency (TEA) approved or post-secondary courses. The amendment to §91.45 establishes career and technology education course requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt rules for the government of schools, facilities, and programs under its authority and see that the schools, facilities, and programs are conducted according to law and to the commission's rules.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 26, 1998.

TRD-9801135
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: December 26, 1997
For further information, please call: (512) 424–6244

♦ ♦ ♦

Subchapter D. Health Care Services

37 TAC §§91.81, 91.85, 91.91, 91.92, 91.95

The Texas Youth Commission (TYC) adopts amendments to §§91.81, 91.91, and 91.95, concerning medical consent, psychopharmacotherapy, and pregnancy and abortion; and new §§91.85 and 91.92, concerning medical care and psychotropic medication-related emergencies, without changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11293).

The justification for amending the sections is to provide a more complete description of medical services to TYC youth.

The adoption of the amendments to §91.81 and §91.91 will clarify that when psychotropic medication is the required medical intervention in a life threatening situation, in accordance with specific criteria, the medication may be given even if the youth cannot or will not give consent. The amendment §91.95 will provide for pregnancy testing for female youth committed to TYC and for regular pre-natal and post-natal care for pregnant females. The new rule §91.85 includes basic standards and policy statements with regards to basic medical services, general procedural requirements, limitations of services, and medical discharge. New rule §91.92 will set forth criteria for administering psychotropic medication in an emergency and establish restrictions on its use.

No comments were received regarding adoption of the amendments and new rules.

The amendments and new rules are adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical or psychiatric treatment that is necessary.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800849
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 424–6244

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37 TAC §91.85

The Texas Youth Commission (TYC) adopts the repeal of §91.85, concerning medical care, without changes as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11295).

The justification for the repeal is the adoption of an updated rule.

The repeal will allow for the adoption of a new replacement.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800845
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 21, 1997

For further information, please call: (512) 424–6244

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Chapter 95. Youth Discipline

Subchapter A. Disciplinary Practices

37 TAC §95.3

The Texas Youth Commission (TYC) adopts an amendment to §95.3, concerning rules of conduct, contraband and dress, without changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11060).

The justification for amending the section is greater protection for the public.

The amendment will add attempted abscondence as a major violation of the rules of conduct.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, § 61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800846
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 424–6244

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Chapter 97. Secuiryt and Control

Subchapter A. Security and Control

37 TAC §97.29

The Texas Youth Commission (TYC) adopts an amendment to §97.29, concerning escape, abscondence and apprehension, without changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11061).

The justification for amending the section is greater protection to the public.

The amendment will define attempted abscondence and allow for TYC staff to notify appropriate personnel when a youth is seen attempting to leave an assigned program location.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children based on the level of children's needs and the degree of risk they present to the public.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800848
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 424–6244

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Chapter 111. Contracting for Services other than Youth Services

37 TAC §111.1, §111.7

The Texas Youth Commission (TYC) adopts amendments to §111.1 and §111.7, concerning contracting for services and professional and consultant contracts, without changes to the proposed text as published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11296).

The justification for amending the sections is a more efficient use of state resources.

The amendments will change the approval requirements for consultant contracts consistent with changes to the statues enacted by the 75th legislature.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt policies and make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency 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 January 20, 1998.

TRD-9800851
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: February 20, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 424–6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part V. Veterans Land Board

Chapter 176. Veterans Homes

40 TAC §176.11

The Veterans Land Board (VLB) adopts new §176.11, concerning construction requirements to Veterans Homes, without changes to the text published in the December 12, 1997, issue of the *Texas Register* (22 TexReg 12256). The text will not be republished.

The new section provides procedures for the awarding of contracts for the design, construction and operation and management of state veterans homes.

As adopted, the new rules provide a framework for the issuance of Requests for Proposals covering the design, construction, and operation and management of state veterans homes, and provide for selecting an entity to oversee all aspects of the design, construction and operation and management of state veterans homes.

No comments were received concerning the proposed rule.

This section is adopted under the provisions of Natural Resources Code, §164.004(6) which directs the VLB to adopt rules for the construction, acquisition, ownership, operation, maintenance, or equipping of veteran's homes.

This agency 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 January 26, 1998.

TRD-9801132
Garry Mauro
Chairman
Veterans Land Board
Effective date: February 15, 1998
Proposal publication date: December 12, 1997
For further information, please call: (512) 305–9129

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Public Utility Commission of Texas

The Public Utility Commission of Texas files this notice of intention to review §22.281 relating to Initiation of Rulemakings; §22.282 relating to Notice and Public Participation in Rulemaking Procedures; §22.283 relating to Emergency Adoption; and §22.284 relating to Informal Information Gathering pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 18484 has been assigned to the review of Chapter 22, Subchapter O, of this title (relating to Rulemaking).

As part of this review process, the commission is proposing amendments to §§22.281, 22.282, and 22.284. The proposed amendments may be found in the Proposed Rules section of the Texas Register. The commission will accept comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist in the comments filed on the proposed amendments.

The commission is not proposing any changes to §22.283 relating to Emergency Adoption. Comments regarding the Section 167 requirement as to whether the reason for adopting §22.283 continues to exist may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 within 20 days after publication of this notice of intention to review. All comments should refer to Project Number 18484.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §22.281. Initiation of Rulemaking.

16 TAC §22.282. Notice and Public Participation in Rulemaking Procedures.

16 TAC §22.283. Emergency Adoption.

16 TAC §22.284. Informal Information Gathering.

TRD-9800863
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 20, 1998

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General Land Office

The General Land Office and the Texas Parks and Wildlife and Texas Department of Criminal Justice Boards for Lease submit the following Plan for Review and Consideration for Re-Adoption and Notice of Intent to Review the rules governing the operation of the boards, 31 TAC, Chapter 201, in accordance with the Appropriations Act, §167. The staff of the General Land Office will immediately begin reviewing Chapter 201.

All comments and/or questions should be directed to Graham Keever, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495, or facsimile (512) 463-6311.

TRD-9801260
Garry Mauro
Commissioner
General Land Office
Filed: January 28, 1998

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure 1: 25 TAC §241.57(r)(2)

BASE ADMINISTRATIVE PENALTIES

Table IA - Base Amounts

Type of User	Amount
All certificate holders	$10,000
Other persons not certified	$25,000

Figure 2: 25 TAC §241.57(r)(2)

Table IB - Percentage of Base Amounts Based on Severity Level of Violation

Severity Level	Percent of Amount Listed in Table IA
I (other)	5
II (other)	15
III (key)	50
IV (key)	80
V (critical)	100

Figure 1: 25 TAC §289.201(b)(102)(B)

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

Figure 4: 25 TAC §289.201(o)(4)

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (MeV)	Quality Factor** (Q)	Fluence per Unit Dose Equivalent* (neutrons cm^{-2} rem^{-1})	Fluence per Unit Dose Equivalent* (neutrons cm^{-2} Sv^{-1})
(thermal)	2.5×10^{-8}	2	980×10^6	980×10^8
	1.0×10^{-7}	2	980×10^6	980×10^8
	1.0×10^{-6}	2	810×10^6	810×10^8
	1.0×10^{-5}	2	810×10^6	810×10^8
	1.0×10^{-4}	2	840×10^6	840×10^8
	1.0×10^{-3}	2	980×10^6	980×10^8
	1.0×10^{-2}	2.5	$1{,}010 \times 10^6$	$1{,}010 \times 10^8$
	1.0×10^{-1}	7.5	170×10^6	170×10^8
	5.0×10^{-1}	11	39×10^6	39×10^8
	1.0	11	27×10^6	27×10^8
	2.5	9	29×10^6	29×10^8
	5.0	8	23×10^6	23×10^8
	7.0	7	24×10^6	24×10^8
	10	6.5	24×10^6	24×10^8
	14	7.5	17×10^6	17×10^8
	20	8	16×10^6	16×10^8
	40	7	14×10^6	14×10^8
	60	5.5	16×10^6	16×10^8
	1.0×10^2	4	20×10^6	20×10^8
	2.0×10^2	3.5	19×10^6	19×10^8
	3.0×10^2	3.5	16×10^6	16×10^8
	4.0×10^2	3.5	14×10^6	14×10^8

* Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

** Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

Figure 5: 25 TAC §289.201(q)(1)

Facility Category	Years Between Routine Inspections
Educational, Healing Arts	
Educational/Academic (Other Than Medical)	2
Hospital	2
Mammography Systems	1
Medical Academic Facility	2
Chiropractic	3
Dental	5
Medical Private or Group Practice (MD/DO)	3
Podiatric	3
Veterinary	5
Other	
Industrial Radiography	1
Minimal Threat Devices	5
Spectroscopy/Spectrography Only	5
Other Industrial Applications	2
Assembler/Consultants	3
Other Services	5
Laser Light Show (Temporary Site)	1 Per Location
Laser Light Show (Permanent Installation)	1
Other Laser	5
Radio-frequency	5

NOTE: The inspection intervals specified above were based upon the average number of health-related violations per inspection by category, as determined from compliance history data. These intervals will be reviewed at least every two years, and appropriate adjustments will be made.

Figure 10: 25 TAC §289.202(ggg)(4)(A)(iii)(V)

Concentration Radionuclide	curie/cubic meter*	nanocurie/gram**
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

* To convert the Ci/m^3 values to gigabecquerel (GBq) per cubic meter, multiply the Ci/m^3 value by 37.

** To convert the nCi/g values to becquerel (Bq) per gram, multiply the Nci/g value by 37.

Figure 11: 25 TAC §289.202(ggg)(4)(A)(iv)(VI)

Radionuclide	Concentration, curie/cubic meter*		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7,000
Sr-90	0.04	150	7,000
Cs-137	1	44	4,600

* To convert the Ci/m^3 value to gigabecquerel (Gbq) per cubic meter, multiply the Ci/m^3 value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in this table determine the waste to be Class C independent of these radionuclides.

Figure 12: 25 TAC §289.202(ggg)(5)

Specific Section	Name of Record	Time Interval Required for Record Keeping
subsection (ll)(4) of this section	Records at Additional Authorized Use/ Storage Sites	While site is authorized on license/registration
subsection (mm)(1)(A) of this section	Radiation Protection Programs	Until termination of license/ registration
subsection (mm)(1)(B) of this section	Program Audits	3 years
subsection (nn)(1) of this section	Routine Surveys, Instrument Calibrations and Package Surveys	3 years
subsection (nn)(2) of this section	Surveys, Measurements, Calculations Used for Dose Determination; Results of Air Sampling, Bioassays; Measurements, Calculations Used to Determine Release of Radioactive Effluents	Until termination of license/ registration
subsection (oo) of this section	Tests for leakage/ contamination of sealed sources	5 years
subsection (pp) of this section	Lifetime Cumulative Occupational Radiation Dose, TRC Form 21-2	Until termination of license
subsection (pp) of this section	Records Used to Prepare TRC Form 21-2	3 years
subsection (qq)(B) of this section	Planned Special Exposures	Until termination of license

subsections (rr)(1-3) of this section	Individual Monitoring Results; TRC Form 21-3	Update annually; Maintain until termination of license/ registration
subsection (rr)(5) of this section	Records Used to Prepare TRC Form 21-3	3 years
subsection (rr)(4) of this section	Embryo/Fetus Dose	Until termination of license/ registration
subsection (ss) of this section	Dose to Individual Members of the Public	Until termination of license/ registration
subsection (tt) of this section	Discharge, Treatment, or Transfer for Disposal	Until termination of license/ registration
subsection (uu) of this section	Entry Control Device Testing for Very High Radiation Areas	3 years

NUCLIDE[a]	AVERAGE[bcf]	MAXIMUM[bdf]	REMOVABLE[bcef]
U-nat, U-235, U-238, and associated decay products except Ra-226, Th-230, Ac-227, and Pa-231	5,000 dpm alpha/ 100 cm^2	15,000 dpm alpha/ 100 cm^2	1,000 dpm alpha/ 100 cm^2
Transuranics, Ra-223, Ra-224, Ra-226, Ra-228, Th-nat, Th-228, Th-230, Th-232, U-232, Pa-231, Ac-227, Sr-90, I-129	1,000 dpm/100 cm^2	3,000 dpm/100 cm^2	200 dpm/100 cm^2
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.	5,000 dpm beta, gamma/100 cm^2	15,000 dpm beta, gamma/100 cm^2	1,000 dpm beta, gamma/100 cm^2

[a] Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides should apply independently.

[b] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[c] Measurements of average contamination level should not be averaged over more than 1 square meter. For objects of less surface area, the average should be derived for each object.

[d] The maximum contamination level applies to an area of not more than 100 cm^2.

[e] The amount of removable radioactive material per 100 cm^2 of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.

[f] The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 centimeter and 1.0 mrad/hr at 1 centimeter, respectively, measured through not more than 7 mg/cm^2 of total absorber.

Figure 14: 25 TAC §289.202(ggg)(7)

Nuclides	Concentrations Limit (Ci/m^3)	Annual Generator Disposal Limit (Ci/yr)
F-18	3×10^{-1}	8
Si-31	$1 \times 10^{+2}$	$3 \times 10^{+3}$
Na-24	9×10^{-4}	2×10^{2}
P-32	2	$5 \times 10^{+1}$
P-33	10	$3 \times 10^{+2}$
S-35	9	$2 \times 10^{+2}$
Ar-41	3×10^{-1}	8
K-42	2×10^{-2}	5×10^{1}
Ca-45	4	$1 \times 10^{+2}$
Ca-47	2×10^{-2}	5×10^{1}
Sc-46	2×10^{-3}	5×10^{2}
Cr-51	6×10^{-1}	$2 \times 10^{+1}$
Fe-59	5×10^{-3}	1×10^{1}
Co-57	6×10^{-2}	2
Co-58	1×10^{-2}	3×10^{1}
Zn-65	7×10^{-3}	2×10^{1}
Ga-67	3×10^{-1}	8
Se-75	5×10^{-2}	1
Br-82	2×10^{-3}	5×10^{2}
Rb-86	4×10^{-2}	1
Sr-85	2×10^{-2}	5×10^{1}
Sr-89	8	$2 \times 10^{+2}$
Y-90	4	$1 \times 10^{+2}$
Y-91	4×10^{-1}	10
Zr-95	8×10^{-3}	2×10^{1}
Nb-95	8×10^{-3}	2×10^{1}
Mo-99	5×10^{-2}	1
Tc-99m	1	$3 \times 10^{+1}$
Rh-106	1	$3 \times 10^{+1}$
Ag-110m	2×10^{-3}	5×10^{2}
Cd-115m	2×10^{-1}	5
In-111	9×10^{-2}	2

In-113m	9	$2 \times 10^{+2}$
Sn-113	6×10^{-2}	2
Sn-119	$2 \times 10^{+1}$	$5 \times 10^{+2}$
Sb-124	2×10^{-3}	5×10^{-2}
Te-129	2×10^{-1}	5
I-123	4×10^{-1}	$1 \times 10^{+1}$
I-125	7×10^{-1}	$2 \times 10^{+1}$
I-131	4×10^{-2}	1
I-133	2×10^{-2}	5×10^{1}
Xe-127	8×10^{-2}	2
Xe-133	1	$3 \times 10^{+1}$
Ba-140	2×10^{-3}	5×10^{2}
La-140	2×10^{-3}	5×10^{2}
Ce-141	4×10^{-1}	$1 \times 10^{+1}$
Ce-144	1×10^{-3}	3×10^{2}
Pr-143	6	$2 \times 10^{+2}$
Nd-147	7×10^{-2}	2
Yb-169	6×10^{-2}	2
Ir-192	1×10^{-2}	3×10^{1}
Au-198	3×10^{-2}	8×10^{1}
Hg-197	8×10^{-1}	$2 \times 10^{+1}$
Tl-201	4×10^{-1}	$1 \times 10^{+1}$
Hg-203	1×10^{-1}	3

NOTE: In any case where there is a mixture in waste of more than one radionuclide, the limiting values for purposes of this paragraph shall be determined as follows:

For each radionuclide in the mixture, calculate the ratio between the quantity present in the mixture and the limit established in this paragraph for the specific radionuclide when not in a mixture. The sum of such ratios for all the radionuclides in the mixture may not exceed "1" (i.e., "unity").

Examples: If radionuclides a, b, and c are present in concentrations C_a, C_b, and C_c, and if the applicable concentrations are CL_a, CL_b, and CL_c respectively, then the concentrations shall be limited so that the following relationship exists:

$$(C_a/CL_a) + (C_b/CL_b) + (C_c/CL_c) \leq 1$$

If the total curies for radionuclides a, b, and c are representd A_a, A_b, and A_c, and the annual curie limit for each radionuclide is AL_a, AL_b, and AL_c, then the generator is limited to the following:

$$(A_a/AL_a) + (A_b/AL_b) + (A_c/AL_c) \leq 1$$

Figure 15: 25 TAC §289.202(ggg)(8)

Isotope	Concentration Limits* (pCi/g)
Americium-241	6
Antimony-125	100
Bismuth-207	60
Cadmium-109	200
Carbon-14	800
Cesium-137	40
Cobalt-60	300
Europium-152	80
Europium-154	20
Europium-155	200
Hydrogen-3	3,000
Iodine-125	200
Iodine-129	200
Iodine-131	60
Iridium-192	40
Iron-55	2,000
Nickel-63	700
Plutonium-238	6
Plutonium-239	6
Plutonium-240	6
Promethium-147	200
Scandium-46	40
Sodium-22	30
Strontium-90	40
Technetium-99	200
Thallium-204	60
Thorium-230	6
Thorium-232	8
Uranium-234	6
Uranium-238	8

* It must be emphasized that every effort must be made to reduce contamination to background levels and that the limits in this table only apply when it is technically or economically impractical to do so.

Figure 16: 25 TAC §289.202(ggg)(9)

PAGE _____ OF _____

TRC Form 21-2
(1993)

[AGENCY]

CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY

1. NAME (LAST, FIRST, MIDDLE INITIAL)			2. IDENTIFICATION NUMBER		3. ID TYPE	4. SEX MALE ☐ FEMALE ☐	5. DATE OF BIRTH
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
19. SIGNATURE OF MONITORED INDIVIDUAL		20. DATE SIGNED	21. CERTIFYING ORGANIZATION		22. SIGNATURE OF DESIGNEE		23. DATE SIGNED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF TRC FORM 21-2

(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.

8. Enter the Agency license or registration number or numbers.

9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.

10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned specialexposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE).

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.

20. Enter the date this form was signed by the monitored individual.

21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.

22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.

23. [OPTIONAL] Enter the date this form was signed by the designated representative.

Figure 17: 25 TAC §289.202(ggg)(10)

PAGE _____ OF _____

TRC Form 21-3
(1993)

[AGENCY]

OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX ☐ MALE ☐ FEMALE	5. DATE OF BIRTH

6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	9A. ☐ RECORD ☐ ESTIMATE	9B. ☐ ROUTINE ☐ PSE

INTAKES

10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN μCi

DOSES (in rem)

DEEP DOSE EQUIVALENT	(DDE)	11.
EYE DOSE EQUIVALENT TO THE LENS OF THE EYE	(LDE)	12.
SHALLOW DOSE EQUIVALENT, WHOLE BODY	(SDE,WB)	13.
SHALLOW DOSE EQUIVALENT, MAX EXTREMITY	(SDE,ME)	14.
COMMITTED EFFECTIVE DOSE EQUIVALENT	(CEDE)	15.
COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN	(CDE)	16.
TOTAL EFFECTIVE DOSE EQUIVALENT *(BLOCKS 11 + 15)*	*(TEDE)*	17.
TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN *(BLOCKS 11 + 16)*	*(TODE)*	18.

19. COMMENTS

20. SIGNATURE -- LICENSEE OR REGISTRANT

21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF TRC FORM 21-3

(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee or registrant.

8. Enter the Agency license or registration number or numbers.

9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.

9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.

10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###x," for instance, Cs-137 or Tc-99m.

10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for other) for all intakes by inhalation.

10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."

10D. Enter the intake of each radionuclide in μCi.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WBI.

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. COMMENTS.
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.

20. Signature of the person designated to represent the licensee or registrant.

21. Enter the date this form was prepared.

Figure 1: 25 TAC, §289.252(h)(4)(A)(iii)(III)(-a-)

The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the NRC or a state with which the NRC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION-RADIOACTIVE MATERIAL

_____

(Name of Manufacturer or Distributor);

Figure 3: 25 TAC, §289.252(h)(8)(D)(i)

This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories, or hospitals, and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the NRC or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority.

_____ ; or
Name of Manufacturer

Figure 5: 25 TAC 289.252(w)(4)

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228(89)	0.001	4,000	I-125(53)	0.5	10	Sn-123(50)	0.01	3,000
Am-241(95)	0.001	2	I-131(53)	0.5	10	Sn-126(50)	0.01	1,000
Am-242(95)	0.001	2	In-114m(49)	0.01	1,000	Ti-144(22)	0.01	100
Am-243(95)	0.001	2	Ir-192(77)	0.001	40,000	V-48(23)	0.01	7,000
Sb-124(51)	0.01	4,000	Fe-55(26)	0.01	40,000	Xe-133(54)	1.0	900,000
Sb-126(51)	0.01	6,000	Fe-59(26)	0.01	7,000	Y-91(39)	0.01	2,000
Ba-133(56)	0.01	10,000	Kr-85(36)	1.0	6,000,000	Zn-65(30)	0.01	5,000
Ba-140(56)	0.01	30,000	Pb-210(82)	0.01	8	Zr-93(40)	0.01	400
Bi-207(83)	0.01	5,000	Mn-56(25)	0.01	60,000	Zr-95(40)	0.01	5,000
Bi-210(83)	0.01	600	Hg-203(80)	0.01	10,000	Any other		
Cd-109(48)	0.01	1,000	Mo-99(42)	0.01	30,000	ß-γ emitter	0.01	10,000
Cd-113(48)	0.01	80	Np-237(93)	0.001	2	Mixed fission		
Ca-45(20)	0.01	20,000	Ni-63(28)	0.01	20,000	products	0.01	1,000
Cf-252(98)	0.001	9(20 mg)	Nb-94(41)	0.01	300	Mixed		
C-14(6)**	0.01	50,000	P-32(15)	0.5	100	corrosion		
Ce-141(58)	0.01	10,000	P-33(15)	0.5	1,000	products	0.01	10,000
Ce-144(58)	0.01	300	Po-210(84)	0.01	10	Contaminated		
Cs-134(55)	0.01	2,000	K-42(19)	0.01	9,000	equipment, ß-γ	0.001	10,000
Cs-137(55)	0.01	2,000	Pm-145(61)	0.01	4,000	Irradiated		
Cl-36(17)	0.5	100	Pm-147(61)	0.01	4,000	material, any		
Cr-51(24)	0.01	300,000	Ru-106(44)	0.01	200	form other		
Co-60(27)	0.001	5,000	Sm-151(62)	0.01	4,000	than solid		
Cu-64(29)	0.01	200,000	Sc-46(21)	0.01	3,000	noncombustible	0.01	1,000
Cm-242(96)	0.001	60	Se-75(34)	0.01	10,000	Irradiated		
Cm-243(96)	0.001	3	Ag-	0.01	1,000	material, solid		
Cm-244(96)	0.001	4	Na-22(11)	0.01	9,000	noncombustible	0.001	10,000
Cm-245(96)	0.001	2	Na-24(11)	0.01	10,000	Mixed		
Eu-152(63)	0.01	500	Sr-89(38)	0.01	3,000	radioactive		
Eu-154(63)	0.01	400	Sr-90(38)	0.01	90	waste, ß-γ	0.01	1,000
Eu-155(63)	0.01	3,000	S-35(16)	0.5	900	Packaged		
Ge-68(32)	0.01	2,000	Tc-99(43)	0.01	10,000	waste, ß-γ***	0.001	10,000
Gd-153(64)	0.01	5,000	Tc-99m(43)	0.01	400,000	Any other		
Au-198(79)	0.01	30,000	Te-127m(52)	0.01	5,000	α emitter	0.001	2
Hf-172(72)	0.01	400	Te-129m(52)	0.01	5,000	Contaminated		
Hf-181(72)	0.01	7,000	Tb-160(65)	0.01	4,000	Equipment, α	0.0001	20
Ho-166(67)	0.01	100	Tm-170(69)	0.01	4,000	Packaged		
H-3(1)	0.5	20,000	Sn-113(50)	0.01	10,000	waste, α***	0.0001	20

*For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. () indicates atomic number.

**Non CO forms only.

***Waste packaged in Type B containers does not require an emergency plan.

Figure 1: 25 TAC §289.254(d)(1)

	Category I	Category II	Category III	Category IV
Class I Storage or Processing Facility	10 mCi	100 mCi	1 Ci	10 Ci
Class II Storage Facility	2 Ci	20 Ci	200 Ci	2000 Ci
Class II Processing Facility	1 Ci	10 Ci	100 Ci	1000 Ci

Element*	Radionuclide**	Category
Actinium (89)	Ac-227	I
	Ac-228	I
Americium (95)	Am-241	I
	Am-243	I
Antimony (51)	Sb-122	IV
	Sb-124	III
	Sb-125	III
Argon (18)	Ar-37	VI
	Ar-41	II
	Ar-41 (uncompressed)***	V
Arsenic (33)	As-73	IV
	As-74	IV
	As-76	IV
	As-77	IV
Astatine (85)	At-211	III
Barium (56)	Ba-131	IV
	Ba-133	II
	Ba-140	III
Berkelium (97)	Bk-249	I
Beryllium (4)	Be-7	IV
Bismuth (83)	Bi-206	IV
	Bi-207	III
	Bi-210	II
	Bi-212	III
Bromine (35)	Br-82	IV
Cadmium (48)	Cd-109	IV
	Cd-115m	III
	Cd-115	IV
Calcium (20)	Ca-45	IV
	Ca-47	IV
Californium (98)	Cf-249	I
	Cf-250	I
	Cf-252	I
Carbon (6)	C-14	IV
Cerium (58)	Ce-141	IV
	Ce-143	IV
	Ce-144	III
Cesium (55)	Cs-131	IV
	Cs-134m	III

	Cs-134	III
	Cs-135	IV
	Cs-136	IV
	Cs-137	III
Chlorine (17)	Cl-36	III
	Cl-38	IV
Chromium (24)	Cr-51	IV
Cobalt (27)	Co-56	III
	Co-57	IV
	Co-58m	IV
	Co-58	IV
	Co-60	III
Copper (29)	Cu-64	IV
Curium (96)	Cm-242	I
	Cm-243	I
	Cm-244	I
	Cm-245	I
	Cm-246	I
Dysprosium (66)	Dy-154	III
	Dy-165	IV
	Dy-166	IV
Erbium (68)	Er-169	IV
	Er-171	IV
Europium (63)	Eu-150	III
	Eu-152m	IV
	Eu-152	III
	Eu-154	II
	Eu-155	IV
Fluorine (9)	F-18	IV
Gadolinium (64)	Gd-153	IV
	Gd-159	IV
Gallium (31)	Ga-67	III
	Ga-72	IV
Germanium (32)	Ge-71	IV
Gold (79)	Au-193	III
	Au-194	III
	Au-195	III
	Au-196	IV
	Au-198	IV
	Au-199	IV
Hafnium (72)	Hf-181	IV
Holmium (67)	Ho-166	IV
Hydrogen (1)	H-3 (see tritium)	

Indium (49)	In-113m	IV
	In-114m	III
	In-115m	IV
	In-115	IV
Iodine (53)	I-124	III
	I-125	III
	I-126	III
	I-129	III
	I-131	III
	I-132	IV
	I-133	III
	I-134	IV
	I-135	IV
Iridium (77)	Ir-190	IV
	Ir-192	III
	Ir-194	IV
Iron (26)	Fe-55	IV
	Fe-59	IV
Krypton (36)	Kr-85m	III
	Kr-85m (uncompressed)***	V
	Kr-85	III
	Kr-85 (uncompressed)***	VI
	Kr-87	II
	Kr-87 (uncompressed)***	V
Lanthanum (57)	La-140	IV
Lead (82)	Pb-203	IV
	Pb-210	II
	Pb-212	II
Lutetium (71)	Lu-172	III
	Lu-177	IV
Magnesium (12)	Mg-28	III
Manganese (25)	Mn-52	IV
	Mn-54	IV
	Mn-56	IV
Mercury (80)	Hg-197m	IV
	Hg-197	
	Hg-203	IV
Mixed fission products (MFP)		II
Molybdenum (42)	Mo-99	IV
Neodymium (60)	Nd-147	IV
	Nd-149	IV
Neptunium (93)	Np-237	I
	Np-239	I

Nickel (28)	Ni-56	III
	Ni-59	IV
	Ni-63	IV
	Ni-65	IV
Niobium (41)	Nb-93m	IV
	Nb-95	IV
	Nb-97	IV
Osmium (76)	Os-185	IV
	Os-191m	IV
	Os-191	IV
	Os-193	IV
Palladium (46)	Pd-103	IV
	Pd-109	IV
Phosphorus (15)	P-32	IV
Platinum (73)	Pt-191	IV
	Pt-193	IV
	Pt-193m	IV
	Pt-197m	IV
	Pt-197	IV
Plutonium (94)	Pu-238****	I
	Pu-239****	I
	Pu-240	I
	Pu-241****	I
	Pu-242	I
Polonium (84)	Po-210	I
Potassium (19)	K-42	IV
	K-43	III
Praseodymium (59)	Pr-142	IV
	Pr-143	IV
Promethium (61)	Pm-147	IV
	Pm-149	IV
Protactinium (91)	Pa-230	I
	Pa-231	I
	Pa-233	II
Radium (88)	Ra-223	II
	Ra-224	II
	Ra-226	I
	Ra-228	I
Radon (86)	Rn-220	IV
	Rn-222	II
Rhenium (75)	Re-183	IV
	Re-186	IV
	Re-187	IV
	Re-188	IV

	Re-Natural	IV
Rhodium (45)	Rh-103m	IV
	Rh-105	IV
Rubidium (37)	Rb-86	IV
	Rb-87	IV
	Rb-Natural	IV
Ruthenium (44)	Ru-97	IV
	Ru-103	IV
	Ru-105	IV
	Ru-106	III
Samarium (62)	Sm-145	III
	Sm-147	III
	Sm-151	IV
	Sm-153	IV
Scandium (21)	Sc-46	III
	Sc-47	IV
	Sc-48	IV
Selenium (34)	Se-75	IV
Silicon (14)	Si-31	IV
Silver (47)	Ag-105	IV
	Ag-110m	III
	Ag-111	IV
Sodium (11)	Na-22	III
	Na-24	IV
Strontium (38)	Sr-85m	IV
	Sr-85	IV
	Sr-89	III
	Sr-90	II
	Sr-91	III
	Sr-92	IV
Sulfur (16)	S-35	IV
Tantalum (73)	Ta-182	III
Technetium (43)	Tc-96m	IV
	Tc-96	IV
	Tc-97m	IV
	Tc-97	IV
	Tc-99m	IV
	Tc-99	IV
Tellurium (52)	Te-125m	IV
	Te-127m	IV
	Te-127	IV
	Te-129m	III
	Te-129	IV
	Te-131m	III

	Te-132	IV
Terbium (65)	Tb-160	III
Thallium (81)	Tl-200	IV
	Tl-201	IV
	Tl-202	IV
	Tl-204	III
Thorium (90)	Th-227	II
	Th-228	I
	Th-230	I
	Th-231	I
	Th-232	III
	Th-234	II
	Th-Natural	III
Thulium (69)	Tm-168	III
	Tm-170	III
	Tm-171	IV
Tin (50)	Sn-113	IV
	Sn-117m	III
	Sn-121	III
	Sn-125	IV
Tritium (1)	H-3	IV
	H-3 (as a gas, as luminous paint, or adsorbed on solid material.)	VII
Tungsten (74)	W-181	IV
	W-185	IV
	W-187	IV
Uranium (92)	U-230	II
	U-232	I
	U-233****	II
	U-234	II
	U-235****	III
	U-236	II
	U-238	III
	U-Natural	III
	U-Enriched****	III
	U-Depleted	III
Vanadium (23)	V-48	IV
	V-49	III
Xenon (54)	Xe-125	III
	Xe-131m	III
	Xe-131m (uncompressed)***	V
	Xe-133	III
	Xe-133 (uncompressed)***	VI

	Xe-135	II
	Xe-135 (uncompressed)***	V
Ytterbium (70)	Yb-175	IV
Yttrium (39)	Y-88	III
	Y-90	IV
	Y-91m	III
	Y-91	III
	Y-92	IV
	Y-93	IV
Zinc (30)	Zn-65	IV
	Zn-69m	IV
	Zn-69	IV
Zirconium (40)	Zr-93	IV
	Zr-95	III
	Zr-97	IV

NOTE: For mixtures of radionuclides and for radionuclides not included in this subsection, see subsection (b) of this section, waste processing and storage categories.

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* Atomic number shown in parentheses.

** Atomic mass number shown after the element symbol.

*** Uncompressed means at a pressure not exceeding 1 atmosphere.

**** Fissile material.

m Metastable state.

Figure 3: 25 TAC §289.254(x)(2)

Radionuclide	RADIOACTIVE HALF-LIFE		
	0 to 1000 days	1000 days to 10^6 years	Over 10^6 years
Atomic No. 1-81	Category III	Category II	Category III
Atomic No. 82 and over	Category I	Category I	Category III

Figure 1: 25 TAC §289.257(s)(1)(D)(*i*)

$$\Sigma_i \frac{B(i)}{A_1(i)} \leq 1$$

Figure 2: 25 TAC §289.257(s)(1)(D)(*ii*)

$$\Sigma_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide i and $A_1(i)$ and $A_2(i)$ are the A_1 and A_2 values for radionuclide i, respectively.

Figure 3: 25 TAC §289.257(s)(1)(D)(*iii*)

$$A_1 \text{ for mixture} = \frac{1}{\Sigma_i \frac{f(i)}{A_1(i)}}$$

where f(i) is the fraction of activity of nuclide i in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide i.

Figure 4: 25 TAC §289.257(s)(1)(D)(*iv*)

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide i in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide i.

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ac-225	Actinium(89)	0.6	16.2	$1x10^{-2}$	0.270	$2.1x10^{3}$	$5.8x10^{4}$
Ac-227		40	1080	$2x10^{-5}$	$5.41x10^{-4}$	2.7	$7.2x10^{1}$
Ac-228		0.6	16.2	0.4	10.8	$8.4x10^{4}$	$2.2x10^{6}$
Ag-105	Silver(47)	2	54.1	2	54.1	$1.1x10^{3}$	$3.0x10^{4}$
Ag-108m		0.6	16.2	0.6	16.2	$9.7x10^{-1}$	$2.6x10^{1}$
Ag-110m		0.4	10.8	0.4	10.8	$1.8x10^{2}$	$4.7x10^{3}$
Ag-111		0.6	16.2	0.5	13.5	$5.8x10^{3}$	$1.6x10^{5}$
Al-26	Aluminum(13)	0.4	10.8	0.4	10.8	$7.0x10^{-4}$	$1.9x10^{-2}$
Am-241	Americium(95)	2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$1.3x10^{-1}$	3.4
Am-242m		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$3.6x10^{-1}$	$1.0x10^{1}$
Am-243		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$7.4x10^{-3}$	$2.0x10^{-1}$
Ar-37	Argon(18)	40	1080	40	1080	$3.7x10^{3}$	$9.9x10^{4}$
Ar-39		20	541	20	541	1.3	$3.4x10^{1}$
Ar-41		0.6	16.2	0.6	16.2	$1.5x10^{6}$	$4.2x10^{7}$
Ar-42		0.2	5.41	0.2	5.41	9.6	$2.6x10^{2}$
As-72	Arsenic(33)	0.2	5.41	0.2	5.41	$6.2x10^{4}$	$1.7x10^{6}$
As-73		40	1080	40	1080	$8.2x10^{2}$	$2.2x10^{4}$
As-74		1	27.0	0.5	13.5	$3.7x10^{3}$	$9.9x10^{4}$
As-76		0.2	5.41	0.2	5.41	$5.8x10^{4}$	$1.6x10^{6}$
As-77		20	541	0.5	13.5	$3.9x10^{4}$	$1.0x10^{6}$
At-211	Astatine(85)	30	811	2	54.1	$7.6x10^{4}$	$2.1x10^{6}$
Au-193	Gold(79)	6	162	6	162	$3.4x10^{4}$	$9.2x10^{5}$
Au-194		1	27.0	1	27.0	$1.5x10^{4}$	$4.1x10^{5}$
Au-195		10	270	10	270	$1.4x10^{2}$	$3.7x10^{3}$
Au-196		2	54.1	2	54.1	$4.0x10^{3}$	$1.1x10^{5}$
Au-198		3	81.1	0.5	13.5	$9.0x10^{3}$	$2.4x10^{5}$
Au-199		10	270	0.9	24.3	$7.7x10^{3}$	$2.1x10^{5}$
Ba-131	Barium(56)	2	54.1	2	54.1	$3.1x10^{3}$	$8.4x10^{4}$

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ba-133m		10	270	0.9	24.3	$2.2x10^{4}$	$6.1x10^{5}$
Ba-133		3	81.1	3	81.1	9.4	$2.6x10^{2}$
Ba-140		0.4	10.8	0.4	10.8	$2.7x10^{3}$	$7.3x10^{4}$
Be-7	Beryllium(4)	20	541	20	541	$1.3x10^{4}$	$3.5x10^{5}$
Be-10		20	541	0.5	13.5	$8.3x10^{-4}$	$2.2x10^{-2}$
Bi-205	Bismuth(83)	0.6	16.2	0.6	16.2	$1.5x10^{3}$	$4.2x10^{4}$
Bi-206		0.3	8.11	0.3	8.11	$3.8x10^{3}$	$1.0x10^{5}$
Bi-207		0.7	18.9	0.7	18.9	1.9	$5.2x10^{1}$
Bi-210m		0.3	8.11	$3x10^{-2}$	0.811	$2.1x10^{-5}$	$5.7x10^{-4}$
Bi-210		0.6	16.2	0.5	13.5	$4.6x10^{3}$	$1.2x10^{5}$
Bi-212		0.3	8.11	0.3	8.11	$5.4x10^{5}$	$1.5x10^{7}$
Bk-247	Berkelium(97)	2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$3.8x10^{-2}$	1.0
Bk-249		40	1080	$8x10^{-2}$	2.16	$6.1x10^{1}$	$1.6x10^{3}$
Br-76	Bromine(35)	0.3	8.11	0.3	8.11	$9.4x10^{4}$	$2.5x10^{6}$
Br-77		3	81.1	3	81.1	$2.6x10^{4}$	$7.1x10^{5}$
Br-82		0.4	10.8	0.4	10.8	$4.0x10^{4}$	$1.1x10^{6}$
C-11	Carbon(6)	1	27	0.5	13.5	$3.1x10^{7}$	$8.4x10^{8}$
C-14		40	1080	2	54.1	$1.6x10^{-1}$	4.5
Ca-41	Calcium(20)	40	1080	40	1080	$3.1x10^{-3}$	$8.5x10^{-2}$
Ca-45		40	1080	0.9	24.3	$6.6x10^{2}$	$1.8x10^{4}$
Ca-47		0.9	24.3	0.5	13.5	$2.3x10^{4}$	$6.1x10^{5}$
Cd-109	Cadmium(48)	40	1080	1	27.0	$9.6x10^{1}$	$2.6x10^{3}$
Cd-113m		20	541	$9x10^{-2}$	2.43	8.3	$2.2x10^{2}$
Cd-115m		0.3	8.11	0.3	8.11	$9.4x10^{2}$	$2.5x10^{4}$
Cd-115		4	108	0.5	13.5	$1.9x10^{4}$	$5.1x10^{5}$
Ce-139	Cerium(58)	6	162	6	162	$2.5x10^{2}$	$6.8x10^{3}$
Ce-141		10	270	0.5	13.5	$1.1x10^{3}$	$2.8x10^{4}$

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ce-143		0.6	16.2	0.5	13.5	$2.5x10^{4}$	$6.6x10^{5}$
Ce-144		0.2	5.41	0.2	5.41	$1.2x10^{2}$	$3.2x10^{3}$
Cf-248	Californium(98)	30	811	$3x10^{-3}$	$8.11x10^{-2}$	$5.8x10^{1}$	$1.6x10^{3}$
Cf-249		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$1.5x10^{-1}$	4.1
Cf-250		5	135	$5x10^{-4}$	$1.35x10^{-2}$	4.0	$1.1x10^{2}$
Cf-251		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$5.9x10^{-2}$	1.6
Cf-252		0.1	2.70	$1x10^{-3}$	$2.70x10^{-2}$	$2.0x10^{1}$	$5.4x10^{2}$
Cf-253		40	1080	$6x10^{-2}$	1.62	$1.1x10^{3}$	$2.9x10^{4}$
Cf-254		$3x10^{-3}$	$8.11x10^{-2}$	$6x10^{-4}$	$1.62x10^{-2}$	$3.1x10^{2}$	$8.5x10^{3}$
Cl-36	Chlorine(17)	20	541	0.5	13.5	$1.2x10^{-3}$	$3.3x10^{-2}$
Cl-38		0.2	5.41	0.2	5.41	$4.9x10^{6}$	$1.3x10^{8}$
Cm-240	Curium(96)	40	1080	$2x10^{-2}$	0.541	$7.5x10^{2}$	$2.0x10^{4}$
Cm-241		2	54.1	0.9	24.3	$6.1x10^{2}$	$1.7x10^{4}$
Cm-242		40	1080	$1x10^{-2}$	0.270	$1.2x10^{2}$	$3.3x10^{3}$
Cm-243		3	81.1	$3x10^{-4}$	$8.11x10^{-3}$	1.9	$5.2x10^{1}$
Cm-244		4	108	$4x10^{-4}$	$1.08x10^{-2}$	3.0	$8.1x10^{5}$
Cm-245		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$6.4x10^{-3}$	$1.7x10^{-1}$
Cm-246		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$1.1x10^{-2}$	$3.1x10^{-1}$
Cm-247		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$3.4x10^{-6}$	$9.3x10^{-5}$
Cm-248		$4x10^{-2}$	1.08	$5x10^{-5}$	$1.35x10^{-3}$	$1.6x10^{-4}$	$4.2x10^{-3}$
Co-55	Cobalt(27)	0.5	13.5	0.5	13.5	$1.1x10^{5}$	$3.1x10^{6}$
Co-56		0.3	8.11	0.3	8.11	$1.1x10^{3}$	$3.0x10^{4}$
Co-57		8	216	8	216	$3.1x10^{2}$	$8.4x10^{3}$
Co-58m		40	1080	40	1080	$2.2x10^{5}$	$5.9x10^{6}$
Co-58		1	27.0	1	27.0	$1.2x10^{3}$	$3.2x10^{4}$
Co-60		0.4	10.8	0.4	10.8	$4.2x10^{1}$	$1.1x10^{3}$
Cr-51	Chromium(24)	30	811	30	811	$3.4x10^{3}$	$9.2x10^{4}$

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Cs-129	Cesium(55)	4	108	4	108	2.8×10^{4}	7.6×10^{5}
Cs-131		40	1080	40	1080	3.8×10^{3}	1.0×10^{5}
Cs-132		1	27.0	1	27.0	5.7×10^{3}	1.5×10^{5}
Cs-134m		40	1080	9	243	3.0×10^{5}	8.0×10^{6}
Cs-134		0.6	16.2	0.5	13.5	4.8×10^{1}	1.3×10^{3}
Cs-135		40	1080	0.9	24.3	4.3×10^{-5}	1.2×10^{-3}
Cs-136		0.5	13.5	0.5	13.5	2.7×10^{3}	7.3×10^{4}
Cs-137		2	54.1	0.5	13.5	3.2	8.7×10^{1}
Cu-64	Copper(29)	5	135	0.9	24.3	1.4×10^{5}	3.9×10^{6}
Cu-67		9	243	0.9	24.3	2.8×10^{4}	7.6×10^{5}
Dy-159	Dysprosium(66)	20	541	20	541	2.1×10^{2}	5.7×10^{3}
Dy-165		0.6	16.2	0.5	13.5	3.0×10^{5}	8.2×10^{6}
Dy-166		0.3	8.11	0.3	8.11	8.6×10^{3}	2.3×10^{5}
Er-169	Erbium(68)	40	1080	0.9	24.3	3.1×10^{3}	8.3×10^{4}
Er-171		0.6	16.2	0.5	13.5	9.0×10^{4}	2.4×10^{6}
Es-253	Einsteinium(99)*	200	5400	2×10^{-2}	5.41×10^{-1}	--	--
Es-254		30	811	3×10^{-3}	8.11×10^{-2}	--	--
Es-254m		0.6	16.2	0.4	10.8	--	--
Es-255		--	--	--	--	--	--
Eu-147	Europium(63)	2	54.1	2	54.1	1.4×10^{3}	3.7×10^{4}
Eu-148		0.5	13.5	0.5	13.5	6.0×10^{2}	1.6×10^{4}
Eu-149		20	541	20	541	3.5×10^{2}	9.4×10^{3}
Eu-150		0.7	18.9	0.7	18.9	6.1×10^{4}	1.6×10^{6}
Eu-152m		0.6	16.2	0.5	13.5	8.2×10^{4}	2.2×10^{6}
Eu-152		0.9	24.3	0.9	24.3	6.5	1.8×10^{2}
Eu-154		0.8	21.6	0.5	13.5	9.8	2.6×10^{2}

* International shipments of Einsteinium require multilateral approval of A_1 and A_2 values.

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Eu-155		20	541	2	54.1	1.8×10^{1}	4.9×10^{2}
Eu-156		0.6	16.2	0.5	13.5	2.0×10^{3}	5.5×10^{4}
F-18	Fluorine(9)	1	27.0	0.5	13.5	3.5×10^{6}	9.5×10^{7}
Fe-52	Iron(26)	0.2	5.41	0.2	5.41	2.7×10^{5}	7.3×10^{6}
Fe-55		40	1080	40	1080	8.8×10^{1}	2.4×10^{3}
Fe-59		0.8	21.6	0.8	21.6	1.8×10^{3}	5.0×10^{4}
Fe-60		40	1080	0.2	5.41	7.4×10^{-4}	2.0×10^{-2}
Fm-255	Fermium(100)*	40	1080	0.8	21.6	--	--
Fm-257		10	270	8×10^{-3}	2.16×10^{-1}	--	--
Ga-67	Gallium(31)	6	162	6	162	2.2×10^{4}	6.0×10^{5}
Ga-68		0.3	8.11	0.3	8.11	1.5×10^{6}	4.1×10^{7}
Ga-72		0.4	10.8	0.4	10.8	1.1×10^{5}	3.1×10^{6}
Gd-146	Gadolinium(64)	0.4	10.8	0.4	10.8	6.9×10^{2}	1.9×10^{4}
Gd-148		3	81.1	3×10^{-4}	8.11×10^{-3}	1.2	3.2×10^{1}
Gd-153		10	270	5	135	1.3×10^{2}	3.5×10^{3}
Gd-159		4	108	0.5	13.5	3.9×10^{4}	1.1×10^{6}
Ge-68	Germanium(32)	0.3	8.11	0.3	8.11	2.6×10^{2}	7.1×10^{3}
Ge-71		40	1080	40	1080	5.8×10^{3}	1.6×10^{5}
Ge-77		0.3	8.11	0.3	8.11	1.3×10^{5}	3.6×10^{6}
H-3	Hydrogen(1)	See T-Tritium					
Hf-172	Hafnium(72)	0.5	13.5	0.3	8.11	4.1×10^{1}	1.1×10^{3}
Hf-175		3	81.1	3	81.1	3.9×10^{2}	1.1×10^{4}
Hf-181		2	54.1	0.9	24.3	6.3×10^{2}	1.7×10^{4}
Hf-182		4	108	3×10^{-2}	0.811	8.1×10^{-6}	2.2×10^{-4}
Hg-194	Mercury(80)	1	27.0	1	27.0	1.3×10^{-1}	3.5
Hg-195m		5	135	5	135	1.5×10^{4}	4.0×10^{5}

* International shipments of Fermium require multilateral approval of A_1 and A_2 values.

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Hg-197m		10	270	0.9	24.3	$2.5x10^4$	$6.7x10^5$
Hg-197		10	270	10	270	$9.2x10^3$	$2.5x10^5$
Hg-203		4	108	0.9	24.3	$5.1x10^2$	$1.4x10^4$
Ho-163	Holmium(67)	40	1080	40	1080	2.7	$7.6x10^1$
Ho-166m		0.6	16.2	0.3	8.11	$6.6x10^{-2}$	1.8
Ho-166		0.3	8.11	0.3	8.11	$2.6x10^4$	$7.0x10^5$
I-123	Iodine(53)	6	162	6	162	$7.1x10^4$	$1.9x10^6$
I-124		0.9	24.3	0.9	24.3	$9.3x10^3$	$2.5x10^5$
I-125		20	541	2	54.1	$6.4x10^2$	$1.7x10^4$
I-126		2	54.1	0.9	24.3	$2.9x10^3$	$8.0x10^4$
I-129		Unlimited	Unlimited	Unlimited	Unlimited	$6.5x10^{-6}$	$1.8x10^{-4}$
I-131		3	81.1	0.5	13.5	$4.6x10^3$	$1.2x10^5$
I-132		0.4	10.8	0.4	10.8	$3.8x10^5$	$1.0x10^7$
I-133		0.6	16.2	0.5	13.5	$4.2x10^4$	$1.1x10^6$
I-134		0.3	8.11	0.3	8.11	$9.9x10^5$	$2.7x10^7$
I-135		0.6	16.2	0.5	13.5	$1.3x10^5$	$3.5x10^6$
In-111	Indium(49)	2	54.1	2	54.1	$1.5x10^4$	$4.2x10^5$
In-113m		4	108	4	108	$6.2x10^5$	$1.7x10^7$
In-114m		0.3	8.11	0.3	8.11	$8.6x10^2$	$2.3x10^4$
In-115m		6	162	0.9	24.3	$2.2x10^5$	$6.1x10^6$
Ir-189	Iridium(77)	10	270	10	270	$1.9x10^3$	$5.2x10^4$
Ir-190		0.7	18.9	0.7	18.9	$2.3x10^3$	$6.2x10^4$
Ir-192		1	27.0	0.5	13.5	$3.4x10^2$	$9.2x10^3$
Ir-193m		10	270	10	270	$2.4x10^3$	$6.4x10^4$
Ir-194		0.2	5.41	0.2	5.41	$3.1x10^4$	$8.4x10^5$
K-40	Potassium(19)	0.6	16.2	0.6	16.2	$2.4x10^{-7}$	$6.4x10^{-6}$
K-42		0.2	5.41	0.2	5.41	$2.2x10^5$	$6.0x10^6$
K-43		1.0	27.0	0.5	13.5	$1.2x10^5$	$3.3x10^6$

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Kr-81	Krypton(36)	40	1080	40	1080	7.8×10^{-4}	2.1×10^{-2}
Kr-85m		6	162	6	162	3.0×10^{5}	8.2×10^{6}
Kr-85		20	541	10	270	1.5×10^{1}	3.9×10^{2}
Kr-87		0.2	5.41	0.2	5.41	1.0×10^{6}	2.8×10^{7}
La-137	Lanthanum(57)	40	1080	2	54.1	1.6×10^{-3}	4.4×10^{-2}
La-140		0.4	10.8	0.4	10.8	2.1×10^{4}	5.6×10^{5}
Lu-172	Lutetium(71)	0.5	13.5	0.5	13.5	4.2×10^{3}	1.1×10^{5}
Lu-173		8	216	8	216	5.6×10^{1}	1.5×10^{3}
Lu-174m		20	541	8	216	2.0×10^{2}	5.3×10^{3}
Lu-174		8	216	4	108	2.3×10^{1}	6.2×10^{2}
Lu-177		30	811	0.9	24.3	4.1×10^{3}	1.1×10^{5}
MFP	For mixed fission products, use formula for mixtures or subsection (s)(3) of this section.						
Mg-28	Magnesium(12)	0.2	5.41	0.2	5.41	2.0×10^{5}	5.4×10^{6}
Mn-52	Manganese(25)	0.3	8.11	0.3	8.11	1.6×10^{4}	4.4×10^{5}
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8×10^{-5}	1.8×10^{-3}
Mn-54		1	27.0	1	27.0	2.9×10^{2}	7.7×10^{3}
Mn-56		0.2	5.41	0.2	5.41	8.0×10^{5}	2.2×10^{7}
Mo-93	Molybdenum(42)	40	1080	7	189	4.1×10^{-2}	1.1
Mo-99		0.6	16.2	0.5	13.5*	1.8×10^{4}	4.8×10^{5}
N-13	Nitrogen(7)	0.6	16.2	0.5	13.5	5.4×10^{7}	1.5×10^{9}
Na-22	Sodium(11)	0.5	13.5	0.5	13.5	2.3×10^{2}	6.3×10^{3}
Na-24		0.2	5.41	0.2	5.41	3.2×10^{5}	8.7×10^{6}
Nb-92m	Niobium(41)	0.7	18.9	0.7	18.9	5.2×10^{3}	1.4×10^{5}
Nb-93m		40	1080	6	162	8.8	2.4×10^{2}
Nb-94		0.6	16.2	0.6	16.2	6.9×10^{-3}	1.9×10^{-1}
Nb-95		1	27.0	1	27.0	1.5×10^{3}	3.9×10^{4}

* 20 Ci for Mo^{99} for domestic use.

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Nb-97		0.6	16.2	0.5	13.5	9.9×10^{5}	2.7×10^{7}
Nd-147	Neodymium(60)	4	108	0.5	13.5	3.0×10^{3}	8.1×10^{4}
Nd-149		0.6	16.2	0.5	13.5	4.5×10^{5}	1.2×10^{7}
Ni-59	Nickel(28)	40	1080	40	1080	3.0×10^{-3}	8.0×10^{-2}
Ni-63		40	1080	30	811	2.1	5.7×10^{1}
Ni-65		0.3	8.11	0.3	8.11	7.1×10^{5}	1.9×10^{7}
Np-235	Neptunium(93)	40	1080	40	1080	5.2×10^{1}	1.4×10^{3}
Np-236		7	189	1×10^{-3}	2.70×10^{-2}	4.7×10^{-4}	1.3×10^{-2}
Np-237		2	54.1	2×10^{-4}	5.41×10^{-3}	2.6×10^{-5}	7.1×10^{-4}
Np-239		6	162	0.5	13.5	8.6×10^{3}	2.3×10^{5}
Os-185	Osmium(76)	1	27.0	1	27.0	2.8×10^{2}	7.5×10^{3}
Os-191m		40	1080	40	1080	4.6×10^{4}	1.3×10^{6}
Os-191		10	270	0.9	24.3	1.6×10^{3}	4.4×10^{4}
Os-193		0.6	16.2	0.5	13.5	2.0×10^{4}	5.3×10^{5}
Os-194		0.2	5.41	0.2	5.41	1.1×10^{1}	3.1×10^{2}
P-32	Phosphorus(15)	0.3	8.11	0.3	8.11	1.1×10^{4}	2.9×10^{5}
P-33		40	1080	0.9	24.3	5.8×10^{3}	1.6×10^{5}
Pa-230	Protactinium(91)	2	54.1	0.1	2.70	1.2×10^{3}	3.3×10^{4}
Pa-231		0.6	16.2	6×10^{-5}	1.62×10^{-3}	1.7×10^{-3}	4.7×10^{-2}
Pa-233		5	135	0.9	24.3	7.7×10^{2}	2.1×10^{4}
Pb-201	Lead(82)	1	27.0	1	27.0	6.2×10^{4}	1.7×10^{6}
Pb-202		40	1080	2	54.1	1.2×10^{-4}	3.4×10^{-3}
Pb-203		3	81.1	3	81.1	1.1×10^{4}	3.0×10^{5}
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5×10^{-6}	1.2×10^{-4}
Pb-210		0.6	16.2	9×10^{-3}	0.243	2.8	7.6×10^{1}
Pb-212		0.3	8.11	0.3	8.11	5.1×10^{4}	1.4×10^{6}
Pd-103	Palladium(46)	40	1080	40	1080	2.8×10^{3}	7.5×10^{4}
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	1.9×10^{-5}	5.1×10^{-4}

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	Specific Activity (Ci/g)
Pd-109		0.6	16.2	0.5	13.5	7.9×10^{4}	2.1×10^{6}
Pm-143	Promethium(61)	3	81.1	3	81.1	1.3×10^{2}	3.4×10^{3}
Pm-144		0.6	16.2	0.6	16.2	9.2×10^{1}	2.5×10^{3}
Pm-145		30	811	7	189	5.2	1.4×10^{2}
Pm-147		40	1080	0.9	24.3	3.4×10^{1}	9.3×10^{2}
Pm-148m		0.5	13.5	0.5	13.5	7.9×10^{2}	2.1×10^{4}
Pm-149		0.6	16.2	0.5	13.5	1.5×10^{4}	4.0×10^{5}
Pm-151		3	81.1	0.5	13.5	2.7×10^{4}	7.3×10^{5}
Po-208	Polonium(84)	40	1080	2×10^{-2}	0.541	2.2×10^{1}	5.9×10^{2}
Po-209		40	1080	2×10^{-2}	0.541	6.2×10^{-1}	1.7×10^{1}
Po-210		40	1080	2×10^{-2}	0.541	1.7×10^{2}	4.5×10^{3}
Pr-142	Praseodymium(59)	0.2	5.41	0.2	5.41	4.3×10^{4}	1.2×10^{6}
Pr-143		4	108	0.5	13.5	2.5×10^{3}	6.7×10^{4}
Pt-188	Platinum(78)	0.6	16.2	0.6	16.2	2.5×10^{3}	6.8×10^{4}
Pt-191		3	81.1	3	81.1	8.7×10^{3}	2.4×10^{5}
Pt-193m		40	1080	9	243	5.8×10^{3}	1.6×10^{5}
Pt-193		40	1080	40	1080	1.4	3.7×10^{1}
Pt-195m		10	270	2	54.1	6.2×10^{3}	1.7×10^{5}
Pt-197m		10	270	0.9	24.3	3.7×10^{5}	1.0×10^{7}
Pt-197		20	541	0.5	13.5	3.2×10^{4}	8.7×10^{5}
Pu-236	Plutonium(94)	7	189	7×10^{-4}	1.89×10^{-2}	2.0×10^{1}	5.3×10^{2}
Pu-237		20	541	20	541	4.5×10^{2}	1.2×10^{4}
Pu-238		2	54.1	2×10^{-4}	5.41×10^{-3}	6.3×10^{-1}	1.7×10^{1}
Pu-239		2	54.1	2×10^{-4}	5.41×10^{-3}	2.3×10^{-3}	6.2×10^{-2}
Pu-240		2	54.1	2×10^{-4}	5.41×10^{-3}	8.4×10^{-3}	2.3×10^{-1}
Pu-241		40	1080	1×10^{-2}	0.270	3.8	1.0×10^{2}
Pu-242		2	54.1	2×10^{-4}	5.41×10^{-3}	1.5×10^{-4}	3.9×10^{-3}
Pu-244		0.3	8.11	2×10^{-4}	5.41×10^{-3}	6.7×10^{-7}	1.8×10^{-5}

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ra-223	Radium(88)	0.6	16.2	$3x10^{-2}$	0.811	$1.9x10^{3}$	$5.1x10^{4}$
Ra-224		0.3	8.11	$6x10^{-2}$	1.62	$5.9x10^{3}$	$1.6x10^{5}$
Ra-225		0.6	16.2	$2x10^{-2}$	0.541	$1.5x10^{3}$	$3.9x10^{4}$
Ra-226		0.3	8.11	$2x10^{-2}$	0.541	$3.7x10^{-2}$	1.0
Ra-228		0.6	16.2	$4x10^{-2}$	1.08	$1.0x10^{1}$	$2.7x10^{2}$
Rb-81	Rubidium(37)	2	54.1	0.9	24.3	$3.1x10^{5}$	$8.4x10^{6}$
Rb-83		2	54.1	2	54.1	$6.8x10^{2}$	$1.8x10^{4}$
Rb-84		1	27.0	0.9	24.3	$1.8x10^{3}$	$4.7x10^{4}$
Rb-86		0.3	8.11	0.3	8.11	$3.0x10^{3}$	$8.1x10^{4}$
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	$3.2x10^{-9}$	$8.6x10^{-8}$
Rb (natural)		Unlimited	Unlimited	Unlimited	Unlimited	$6.7x10^{6}$	$1.8x10^{8}$
Re-183	Rhenium(75)	5	135	5	135	$3.8x10^{2}$	$1.0x10^{4}$
Re-184m		3	81.1	3	81.1	$1.6x10^{2}$	$4.3x10^{3}$
Re-184		1	27.0	1	27.0	$6.9x10^{2}$	$1.9x10^{4}$
Re-186		4	108	0.5	13.5	$6.9x10^{3}$	$1.9x10^{5}$
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	$1.4x10^{-9}$	$3.8x10^{-8}$
Re-188		0.2	5.41	0.2	5.41	$3.6x10^{4}$	$9.8x10^{5}$
Re-189		4	108	0.5	13.5	$2.5x10^{4}$	$6.8x10^{5}$
Re (natural)		Unlimited	Unlimited	Unlimited	Unlimited	____	$2.4x10^{-8}$
Rh-99	Rhodium(45)	2	54.1	2	54.1	$3.0x10^{3}$	$8.2x10^{4}$
Rh-101		4	108	4	108	$4.1x10^{1}$	$1.1x10^{3}$
Rh-102m		2	54.1	0.9	24.3	$2.3x10^{2}$	$6.2x10^{3}$
Rh-102		0.5	13.5	0.5	13.5	$4.5x10^{1}$	$1.2x10^{3}$
Rh-103m		40	1080	40	1080	$1.2x10^{6}$	$3.3x10^{7}$
Rh-105		10	270	0.9	24.3	$3.1x10^{4}$	$8.4x10^{5}$
Rn-222	Radon(86)	0.2	5.41	$4x10^{-3}$	0.108	$5.7x10^{3}$	$1.5x10^{5}$
Ru-97	Ruthenium(44)	4	108	4	108	$1.7x10^{4}$	$4.6x10^{5}$
Ru-103		2	54.1	0.9	24.3	$1.2x10^{3}$	$3.2x10^{4}$

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ru-105		0.6	16.2	0.5	13.5	$2.5x10^{5}$	$6.7x10^{6}$
Ru-106		0.2	5.41	0.2	5.41	$1.2x10^{2}$	$3.3x10^{3}$
S-35	Sulfur(16)	40	1080	2	54.1	$1.6x10^{3}$	$4.3x10^{4}$
Sb-122	Antimony(51)	0.3	8.11	0.3	8.11	$1.5x10^{4}$	$4.0x10^{5}$
Sb-124		0.6	16.2	0.5	13.5	$6.5x10^{2}$	$1.7x10^{4}$
Sb-125		2	54.1	0.9	24.3	$3.9x10^{1}$	$1.0x10^{3}$
Sb-126		0.4	10.8	0.4	10.8	$3.1x10^{3}$	$8.4x10^{4}$
Sc-44	Scandium(21)	0.5	13.5	0.5	13.5	$6.7x10^{5}$	$1.8x10^{7}$
Sc-46		0.5	13.5	0.5	13.5	$1.3x10^{3}$	$3.4x10^{4}$
Sc-47		9	243	0.9	24.3	$3.1x10^{4}$	$8.3x10^{5}$
Sc-48		0.3	8.11	0.3	8.11	$5.5x10^{4}$	$1.5x10^{6}$
Se-75	Selenium(34)	3	81.1	3	81.1	$5.4x10^{2}$	$1.5x10^{4}$
Se-79		40	1080	2	54.1	$2.6x10^{-3}$	$7.0x10^{-2}$
Si-31	Silicon(14)	0.6	16.2	0.5	13.5	$1.4x10^{6}$	$3.9x10^{7}$
Si-32		40	1080	0.2	5.41	3.9	$1.1x10^{2}$
Sm-145	Samarium(62)	20	541	20	541	$9.8x10^{1}$	$2.6x10^{3}$
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	$8.5x10^{-1}$	$2.3x10^{-8}$
Sm-151		40	1080	4	108	$9.7x10^{-1}$	$2.6x10^{1}$
Sm-153		4	108	0.5	13.5	$1.6x10^{4}$	$4.4x10^{5}$
Sn-113	Tin(50)	4	108	4	108	$3.7x10^{2}$	$1.0x10^{4}$
Sn-117m		6	162	2	54.1	$3.0x10^{3}$	$8.2x10^{4}$
Sn-119m		40	1080	40	1080	$1.4x10^{2}$	$3.7x10^{3}$
Sn-121m		40	1080	0.9	24.3	2.0	$5.4x10^{1}$
Sn-123		0.6	16.2	0.5	13.5	$3.0x10^{2}$	$8.2x10^{3}$
Sn-125		0.2	5.41	0.2	5.41	$4.0x10^{3}$	$1.1x10^{5}$
Sn-126		0.3	8.11	0.3	8.11	$1.0x10^{-3}$	$2.8x10^{-2}$
Sr-82	Strontium(38)	0.2	5.41	0.2	5.41	$2.3x10^{3}$	$6.2x10^{4}$
Sr-85m		5	135	5	135	$1.2x10^{6}$	$3.3x10^{7}$

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Sr-85		2	54.1	2	54.1	$8.8x10^{2}$	$2.4x10^{4}$
Sr-87m		3	81.1	3	81.1	$4.8x10^{5}$	$1.3x10^{7}$
Sr-89		0.6	16.2	0.5	13.5	$1.1x10^{3}$	$2.9x10^{4}$
Sr-90		0.2	5.41	0.1	2.70	5.1	$1.4x10^{2}$
Sr-91		0.3	8.11	0.3	8.11	$1.3x10^{5}$	$3.6x10^{6}$
Sr-92		0.8	21.6	0.5	13.5	$4.7x10^{5}$	$1.3x10^{7}$
T	Tritium(1)	40	1080	40	1080	$3.6x10^{2}$	$9.7x10^{3}$
Ta-178	Tantalum(73)	1	27.0	1	27.0	$4.2x10^{6}$	$1.1x10^{8}$
Ta-179		30	811	30	811	$4.1x10^{1}$	$1.1x10^{3}$
Ta-182		0.8	21.6	0.5	13.5	$2.3x10^{2}$	$6.2x10^{3}$
Tb-157	Terbium(65)	40	1080	10	270	$5.6x10^{-1}$	$1.5x10^{1}$
Tb-158		1	27.0	0.7	18.9	$5.6x10^{-1}$	$1.5x10^{1}$
Tb-160		0.9	24.3	0.5	13.5	$4.2x10^{2}$	$1.1x10^{4}$
Tc-95m	Technetium(43)	2	54.1	2	54.1	$8.3x10^{2}$	$2.2x10^{4}$
Tc-96m		0.4	10.8	0.4	10.8	$1.4x10^{6}$	$3.8x10^{7}$
Tc-96		0.4	10.8	0.4	10.8	$1.2x10^{4}$	$3.2x10^{5}$
Tc-97m		40	1080	40	1080	$5.6x10^{2}$	$1.5x10^{4}$
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	$5.2x10^{-5}$	$1.4x10^{-3}$
Tc-98		0.7	18.9	0.7	18.9	$3.2x10^{-5}$	$8.7x10^{-4}$
Tc-99m		8	216	8	216	$1.9x10^{5}$	$5.3x10^{6}$
Tc-99		40	1080	0.9	24.3	$6.3x10^{-4}$	$1.7x10^{-2}$
Te-118	Tellurium(52)	0.2	5.41	0.2	5.41	$6.8x10^{3}$	$1.8x10^{5}$
Te-121m		5	135	5	135	$2.6x10^{2}$	$7.0x10^{3}$
Te-121		2	54.1	2	54.1	$2.4x10^{3}$	$6.4x10^{4}$
Te-123m		7	189	7	189	$3.3x10^{2}$	$8.9x10^{3}$
Te-125m		30	811	9	243	$6.7x10^{2}$	$1.8x10^{4}$

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Te-127m		20	541	0.5	13.5	$3.5x10^{2}$	$9.4x10^{3}$
Te-127		20	541	0.5	13.5	$9.8x10^{4}$	$2.6x10^{6}$
Te-129m		0.6	16.2	0.5	13.5	$1.1x10^{3}$	$3.0x10^{4}$
Te-129		0.6	16.2	0.5	13.5	$7.7x10^{5}$	$2.1x10^{7}$
Te-131m		0.7	18.9	0.5	13.5	$3.0x10^{4}$	$8.0x10^{5}$
Te-132		0.4	10.8	0.4	10.8	$1.1x10^{4}$	$3.0x10^{5}$
Th-227	Thorium(90)	9	243	$1x10^{-2}$	0.270	$1.1x10^{3}$	$3.1x10^{4}$
Th-228		0.3	8.11	$4x10^{-4}$	$1.08x10^{-2}$	$3.0x10^{1}$	$8.2x10^{2}$
Th-229		0.3	8.11	$3x10^{-5}$	$8.11x10^{-4}$	$7.9x10^{-3}$	$2.1x10^{-1}$
Th-230		2	54.1	$2x10^{-4}$	$5.41x10^{-3}$	$7.6x10^{-4}$	$2.1x10^{-2}$
Th-231		40	1080	0.9	24.3	$2.0x10^{4}$	$5.3x10^{5}$
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	$4.0x10^{-9}$	$1.1x10^{-7}$
Th-234		0.2	5.41	0.2	5.41	$8.6x10^{2}$	$2.3x10^{4}$
Th (natural)		Unlimited	Unlimited	Unlimited	Unlimited	$8.1x10^{-9}$	$2.2x10^{-7}$
Ti-144	Titanium(22)	0.5	13.5	0.2	5.41	6.4	$1.7x10^{2}$
Tl-200	Thallium(81.1)	0.8	21.6	0.8	21.6	$2.2x10^{4}$	$6.0x10^{5}$
Tl-201		10	270	10	270	$7.9x10^{3}$	$2.1x10^{5}$
Tl-202		2	54.1	2	54.1	$2.0x10^{3}$	$5.3x10^{4}$
Tl-204		4	108	0.5	13.5	$1.7x10^{1}$	$4.6x10^{2}$
Tm-167	Thulium(69)	7	189	7	189	$3.1x10^{3}$	$8.5x10^{4}$
Tm-168		0.8	21.6	0.8	21.6	$3.1x10^{2}$	$8.3x10^{3}$
Tm-170		4	108	0.5	13.5	$2.2x10^{2}$	$6.0x10^{3}$
Tm-171		40	1080	10	270	$4.0x10^{1}$	$1.1x10^{3}$
U-230	Uranium(92)	40	1080	$1x10^{-2}$	0.270	$1.0x10^{3}$	$2.7x10^{4}$
U-232		3	81.1	$3x10^{-4}$	$8.11x10^{-3}$	$8.3x10^{-1}$	$2.2x10^{1}$
U-233		10	270	$1x10^{-3}$	$2.70x10^{-2}$	$3.6x10^{-4}$	$9.7x10^{-3}$
U-234		10	270	$1x10^{-3}$	$2.70x10^{-2}$	$2.3x10^{-4}$	$6.2x10^{-3}$

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
U-235		Unlimited	Unlimited	Unlimited	Unlimited	8.0×10^{-8}	2.2×10^{-6}
U-236		10	270	1×10^{-3}	2.70×10^{-2}	2.4×10^{-6}	6.5×10^{-5}
U-238		Unlimited	Unlimited	Unlimited	Unlimited	1.2×10^{-8}	3.4×10^{-7}
U (natural)		Unlimited	Unlimited	Unlimited	Unlimited	2.6×10^{-8}	7.1×10^{-7}
U (enriched 5% or less)		Unlimited	Unlimited	Unlimited	Unlimited	—	*
U (enriched more than 5%)		10	270	1×10^{-3}	2.70×10^{-2}	—	*
U (depleted)		Unlimited	Unlimited	Unlimited	Unlimited	—	*
V-48	Vanadium(23)	0.3	8.11	0.3	8.11	6.3×10^{3}	1.7×10^{5}
V-49		40	1080	40	1080	3.0×10^{2}	8.1×10^{3}
W-178	Tungsten(74)	1	27.0	1	27.0	1.3×10^{3}	3.4×10^{4}
W-181		30	811	30	811	2.2×10^{2}	6.0×10^{3}
W-185		40	1080	0.9	24.3	3.5×10^{2}	9.4×10^{3}
W-187		2	54.1	0.5	13.5	2.6×10^{4}	7.0×10^{5}
W-188		0.2	5.41	0.2	5.41	3.7×10^{2}	1.0×10^{4}
Xe-122	Xenon(54)	0.2	5.41	0.2	5.41	4.8×10^{4}	1.3×10^{6}
Xe-123		0.2	5.41	0.2	5.41	4.4×10^{5}	1.2×10^{7}
Xe-127		4	108	4	108	1.0×10^{3}	2.8×10^{4}
Xe-131m		40	1080	40	1080	3.1×10^{3}	8.4×10^{4}
Xe-133		20	541	20	541	6.9×10^{3}	1.9×10^{5}
Xe-135		4	108	4	108	9.5×10^{4}	2.6×10^{6}
Y-87	Yttrium(39)	2	54.1	2	54.1	1.7×10^{4}	4.5×10^{5}
Y-88		0.4	10.8	0.4	10.8	5.2×10^{2}	1.4×10^{4}
Y-90		0.2	5.41	0.2	5.41	2.0×10^{4}	5.4×10^{5}
Y-91m		2	54.1	2	54.1	1.5×10^{6}	4.2×10^{7}
Y-91		0.3	8.11	0.3	8.11	9.1×10^{2}	2.5×10^{4}
Y-92		0.2	5.41	0.2	5.41	3.6×10^{5}	9.6×10^{6}

* See subsection (s)(4) of this section.

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific Activity (TBq/g)	(Ci/g)
Y-93		0.2	5.41	0.2	5.41	$1.2x10^{5}$	$3.3x10^{6}$
Yb-169	Ytterbium(70)	3	81.1	3	81.1	$8.9x10^{2}$	$2.4x10^{4}$
Yb-175		30	811	0.9	24.3	$6.6x10^{3}$	$1.8x10^{5}$
Zn-65	Zinc(30)	2	54.1	2	54.1	$3.0x10^{2}$	$8.2x10^{3}$
Zn-69m		2	54.1	0.5	13.5	$1.2x10^{5}$	$3.3x10^{6}$
Zn-69		4	108	0.5	13.5	$1.8x10^{6}$	$4.9x10^{7}$
Zr-88	Zirconium(40)	3	81.1	3	81.1	$6.6x10^{2}$	$1.8x10^{4}$
Zr-93		40	1080	0.2	5.41	$9.3x10^{-5}$	$2.5x10^{-3}$
Zr-95		1	27.0	0.9	24.3	$7.9x10^{2}$	$2.1x10^{4}$
Zr-97		0.3	8.11	0.3	8.11	$7.1x10^{4}$	$1.9x10^{6}$

Figure 6: 25 TAC §289.257(s)(3)

Contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta- or gamma-emitting nuclides are known to be present.	0.2	5	0.02	0.5
Alpha-emitting nuclides are known to be present, or no relevant data are available.	0.10	2.70	$2x10^{-5}$	$5.41x10^{-4}$

Figure 7: 25 TAC §289.257(s)(4)

Uranium Enrichment* wt % U-235 present	Specific Activity	
	TBq/g	Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	5.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}
95.0	3.4×10^{-6}	9.1×10^{-5}

* The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

Figure 1: 25 TAC §289.260(s)

Constituent or Property	Maximum Concentration (mg/l)	(pCi/l)
Arsenic	0.05	
Barium	1.0	
Cadmium	0.01	
Chromium	0.05	
Lead	0.05	
Mercury	0.002	
Selenium	0.01	
Silver	0.05	
Endrin 1,2,3,4,10,10-hexachloro-6,7-expoxy-1,4,4a,5,6,7,8,8a-octahydro-endo, endo-1,4:5,8-dimethanonaphthalene	0.0002	
Lindane 1 ,2 ,3 ,4 ,5 , 6 -hexachlorocyclohexane	0.004	
Methoxychlor 1,1,1-trichloro-2,2-bis-(p-methoxyphenyl) ethane	0.1	
Toxaphene Chlorinated camphene	0.005	
2,4-D (2,4-Dichlorophenoxy)acetic acid	0.1	
Silvex 2-(2,4,5-Trichlorophenoxy) propionic acid	0.01	
Combined radium-226 and radium-228		5
Gross alpha-particle activity (excluding radon and uranium when producing uranium byproduct material or radon and thorium when producing thorium byproduct material)		15

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department On Aging

Wednesday, February 11, 1998 , 2:00 p.m.

Texas Department On Aging, 4900 North Lamar Boulevard, Room 4501

Austin

Audit And Finance Committee

AGENDA:

Consider and possibly act on: Call to order. Minutes of December 3, 1997 meeting. Budget report. Ombudsman performance measures. Memorandum of Understanding with the Texas Department of Human Services — Title XX meals. Request for proposals for year three grant from the Texas Planning Council for Developmental Disabilities. Funding methodology for possible additional Health Care Financing Administration funds. Budget for 1998 Governor's Conference on Aging. Amendment to the FY 1998 contract between Texas Department on Aging and the Texas Department of Insurance to reflect $14,430.32 in carryover funds from the FY 1997 contract. Signature authority for release of payments through the Uniform State Accounting System. Internal Audit of Performance Measures Reporting. Audit updates — internal and State Auditor. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas (512) 424–6840.
Filed: January 22, 1998, 8:57 a.m.

TRD-9800985

♦ ♦ ♦

Wednesday, February 11, 1998 , 2:00 p.m.

Texas Department On Aging, 4900 North Lamar Boulevard, Room 3501

Austin

Planning Committee

Agenda:

Call to order. Minutes of December 3, 1997 meeting.

Review of Health and Human Services Commission's Coordinated Strategic Plan; make recommendation to Board on Aging.

Review changes to agency Strategic Plan; make recommendation to Board on Aging

Review "exceptional items; for additional funding in agency Legislative Appropriations Request; make recommendation to Board on Aging.

Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas (512) 424–6840.
Filed: January 22, 1998, 8:57 a.m.

TRD-9800984

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Thursday, February 12, 1998 , 9:30 a.m.

Texas Department On Aging, 4900 North Lamar Boulevard, Room 5501

Austin

Board on Aging

Agenda:

Consider and possibly act on: Call to order. Minutes of August 14, and December 4, 1997 meetings. Public testimony. Chairman's, Executive Director's, Citizens Advisory Council reports. Options for Independent Living Advisory Committee — Approve new members. Audit and Finance Committee — Budget report; Ombudsman performance standards; Memorandum of Understanding with Texas Department of Human Services- Title XX meals; Request for proposals for Texas Planning Council for Developmental Disabilities grant; Funding methodology for possible additional Health Care Financing Administration funds; Budget for 1998 Governor's Conference; Amendment to FY 1998 contract with Texas Department of Insurance; Signature authority for release of payments through Uniform State Accounting System; Internal Audit; Audit updates. Planning Committee — Review of Health and Human Services Commission Coordinated Strategic Plan; Approve changes to agency Strategic Plan; Approve "exceptional items" for additional funding in agency Legislative Appropriations request. Area Agency on Aging (AAA) Operations Committee — Revise Rule review timeline; New administrative rule relating to AAA use of uniform forms; Revision by Memorandum of Understanding with the Texas Department of Hu-

man Services. Board resolutions. Reports. Board member travel. General announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas (512) 424–6840.
Filed: January 22, 1998, 8:58 a.m.

TRD-9800986

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Texas Department of Agriculture

Tuesday, February 3, 1998, 1:30 p.m.

Harris County Extension Center, #2 Abercrombie Drive

Houston

Texas Rice Producers Board

AGENDA:

Call to Order

Approve Minutes of Previous Meeting

Discussion and Action: Financial Report; Review Crop Acreage and Production Information; Discuss and Adjust Budget, if Necessary.

Discussion: Other Business

Adjourn.

Contact: Curtis Leonhardt, P.O. Box 740250, Houston, Texas 77274, 1–800–888–7423.
Filed: January 26, 1998, 4:28 p.m.

TRD-9801177

♦ ♦ ♦

Tuesday-Wednesday, February 3–4, 1998, 1:00 p.m. and 8:00 a.m. respectively

Ambassador Hotel, 3100 IH40 West

Amarillo

Texas Wheat Producers Board

AGENDA:

Call to Order and Opening Remarks

Action: Minutes of December meeting; Quarterly and Year-to-Date Financial Report; Request to amend the 1997–1998 Budget.

Discussion and Action: Year to Date Collection and Refund Report; Setting of the 1998–1999 Assessment Level; Presentation to the Board regarding Officers' and Directors' Insurance; Presentation to the Board regarding Panhandle Wheat Improvement Project; Adjourn for Executive Session.

Executive Session: In accordance with Tex. Govt. Code. Ann., §551.074, to discuss personnel matters; Adjourn Executive session. Reconvene Regular Meeting.

Discussion and Action: If necessary, on Executive Session: Line Item Presentation of 1998–1999 FY Operations; Adoption of total 1998–1999 FY Operations; Adoption of total 1998–99 FY Budget. Recess until Wednesday, Feb. 4.

February 4, 1998

Call meeting to order and Opening Remarks

Report: From TDA Representative; Wheat Foods Council Update; Blackland Income Growth Meeting; Texas Seed Trade Association Meeting; Past Quarter and Future Activities Report; Other Board Members' Reports.

Report and Action: US Wheat Associates Board of Directors Meeting; NAWG Board of Directors Meeting; NAWG Foundation Board of Directors Meeting; Wheat Export Trade Education Committee.

Action: Setting of next meeting, May 5–6.

Call to Order and Opening Remarks

Adjourn

Contact: Mr. Bill Nelson, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352–2191.
Filed: January 26, 1998, 4:25 p.m.

TRD-9801176

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Texas Agricultural Finance Authority

Friday, February 6, 1998, 9:00 a.m.

1700 North Congress Avenue, Room 911

Austin

AGENDA:

Discussion and action on: minutes of previous meeting; Loan Guaranty renewal for Sesaco, Inc.; Young Farmer Loan Guarantee renewal for Glenn Dylla; Linked Deposit applications on the following; C. Anderson; D. Kubenka; G. Turner; Commanche Springs Ranch; Roland Halfmann Farms, Inc.; Floyd J. Schwartz Farms; Billy Eggemeyer Farms; J. & D Eggemeyer Farms; S&S Wilson Farms, Inc.; Johnny Latzel dba J.L. Farms; performance measures developed in cooperation with the State Auditor's Office, the Legislative Budget Board, and the Governor's Office of Planning and Budget for the Authority Programs; promotional Activity Reports for the Authority programs for FY 1998; Loan Guaranty Portfolio; Young Farmer Loan Guarantee Portfolio; Farm and Ranch Finance Program Portfolio; October, November, and December 1997 Budgets; State Auditor's Compliance Audit of the Resolution providing for Issuance of Taxable Commercial Paper. Executive Session: meet with attorney to seek legal advice on pending or contemplated litigation in accordance with the Tex. Govt. Code §551.071. Adjourn Executive Session. Reconvene Board Meeting. Discussion and possible action on executive session. Public Comment. Discussion and action on future meeting date.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463–7639.
Filed: January 27, 1998, 11:18 a.m.

TRD-9801197

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Texas Commission on Alcohol and Drug Abuse

Thursday, January 29, 1998, 11:00 a.m.

4001 Duranzo, First Floor, LULAC Project Armistad

El Paso

Regional Advisory Consortium, (RAC) Region 10

AGENDA:

Call to order; welcome and introduction of new members and guests; approval of minutes; overview of Regional Advisory Consortia and Behavioral Health Organizations; statewide services delivery plan

update; schedule Van Horn meeting; old business; new business; public comment/announcements; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753–5233, (512) 349–6669 or (800) 832–9623, extension 6669.
Filed: January 21, 1998, 1:27 p.m.

TRD-9800957

♦ ♦ ♦

Friday, January 30, 1998, 11:00 a.m.

3930 Kirby, Suite 207, Texas Youth Commission

Houston

Regional Advisory Consortium, (RAC) Region 6

AGENDA:

Call to order; welcome and introduction of guests; approval of minutes; services network discussion; MIS update; old business; new business; public comment/announcements; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753–5233, (512) 349–6669 or (800) 832–9623, extension 6669.
Filed: January 22, 1998, 9:53 p.m.

TRD-9800990

♦ ♦ ♦

Thursday, February 12, 1998, 1:00 p.m.

7271 Wurzbach, Suite 220, The University of Texas Health Science Center, Community Pediatrics, Medical Center Plaza

San Antonio

Regional Advisory Consortium, (RAC) Region 8

AGENDA:

Call to order; welcome and introduction of guests; approval of minutes; statewide service delivery plan; prevention training grant; management information network discussion; election of officers/ membership recommendations; old business; new business; public comment/announcements; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753–5233, (512) 349–6669 or (800) 832–9623, extension 6669.
Filed: January 28, 1998, 10:10 a.m.

TRD-9801240

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State Board of Barber Examiners

Tuesday, February 3, 1998, 9:00 a.m.

William P. Hobby State Office Building, 333 Guadalupe Street, Tower 2, Room 400A

Austin

Board of Directors

AGENDA:

Opening of meeting; Roll Call. Read and possibly approve minutes of November 4, 1997 Board meeting.

OPEN SESSION: Executive Director's report on agency operations: State Auditor's Review of Performance Measures; Disaster Recovery Planning; Year 2000 Remediation Efforts; First Quarter FY 1998 Performance Measure; Spanish Oral Barber Exams: Agency Budget. Discussion and possible action regarding interagency contract between State Board of Barber Examiners and Texas Cosmetology Commission. Discussion and Possible action regarding joint board meeting of State Board of Barber Examiners and Texas Cosmetology Commission. Discussion and possible action regarding modification of barber exams. Discussion and possible action regarding a new rule limiting the number of times a student can take barber exam. Discussion and possible action regarding current Rule 51.92, which related to the display of barber poles in barber shops. Discussion and possible action regarding a possible new rule providing for the issuance of temporary barber shop permits. Discussion and possible action regarding current Rule 51.85 concerning reciprocal licensing of barbers. Discussion and possible action regarding General Appropriations Act, Article IX, §167– Development of a plan to review all rules currently in effect. Discussion and possible action regarding bonus for interim Executive Director.

EXECUTIVE SESSION: Pursuant to §551.074, Texas Government Code. Discussion of personnel matters: the appointment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director.

OPEN SESSION: Discussion and possible action concerning the appointment, evaluation, reassignment, duties, discipline or dismissal of the Executive Director. The Board reserves the right to go into executive session on any posted agenda item as permitted by Government Code 551. Adjournment.

Contact: Charles Clay Mills, 333 Guadalupe, Suite 2–110, Austin, Texas 78701, (512) 305–8475.
Filed: January 21, 1998, 1:06 p.m.

TRD-9800956

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Texas Commission for the Blind

Thursday, February 5, 1998, 8:30 a.m.

Holiday Inn Civic Center, 800 Garden Street

Laredo

Governing Board Budget Committee

AGENDA:

1. Discussion and action: Capital outlay items.

2. Discussion and action: Adjustments to agency budget

3. Discussion and action: 10% reduction in travel expenditures

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459–2601.
Filed: January 27, 1998, 9:30 a.m.

TRD-9801185

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Thursday, February 5, 1998, 10:30 a.m.

Holiday Inn Civic Center, 800 Garden Street

Laredo

Governing Board Audit Committee

AGENDA:

1. Discussion and action: Status on FY '97 Projects.

2. Discussion and action: Status of FY '98 Projects.

3. Discussion and action: Travel Budget Reductions

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459–2601.
Filed: January 27, 1998, 9:30 a.m.

TRD-9801186

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Thursday, February 5, 1998, 1:00 p.m.

Holiday Inn Civic Center, 800 Garden Street

Laredo

Governing Board Administration Committee

AGENDA:

1. Discussion and action: Hearings rules for resolution of consumer dissatisfaction

2. Discussion and action: Rules on Personal Assistance Services

3. Discussion and action: Amendment of §172.3 of Chapter 172, Advisory Committees and Councils

4. Discussion and action: Resolution 9704 from the Elected Committee of Managers concerning probationary periods and eligibility status.

5. Discussion and action: Resolution 9705 from the Elected Committee of Managers concerning roadside vending locations.

6. Discussion and action: Resolution 9706 from the Elected Committee of Managers concerning vending machine equipment.

7. Discussion and action: Establishment grant procedures and policies.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459–2601.
Filed: January 27, 1998, 9:30 a.m.

TRD-9801187

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Friday, February 6, 1998, 9:00 a.m.

Holiday Inn Civic Center, 800 Garden Street

Laredo

Governing Board

AGENDA:

1. Introductions

2. Public Comments

3. Approval: Minutes from Board meeting of December 5, 1997

OLD BUSINESS:

4. Discussion and action: Repeal of §§159.1 through 159.24 of Chapter 159 of the Texas Administrative Code concerning fair hearing procedures for resolution of consumer dissatisfaction, the repeal of Chapter 161, Scope of Services, and adoption of new Chapter 161, Appeals and Hearings Procedures

NEW BUSINESS:

5. Discussion and action: Interim Executive Director's report on Fiscal Year 1998 first quarter activities.

6. Discussion and action: Proposed repeal of §163.36, Personal Assistance Services, of Chapter 183, Vocational Rehabilitation Program, and simultaneous proposal of new section.

7. Discussion and action: Proposed amendment to §172.3 of Chapter 172, Advisory Committees and Councils.

8. Discussion and action: Acceptance of Gifts

9. Discussion and action: Signature Authority and Delegation to Executive Director

10. Discussion and action: Board Committee Reports

Audit Committee: Dr. James L. Caldwell, Chair

Budget Committee: Olivia Sandoval, Chair

Administrative Committee: C. Robert Keeney, Jr., Chair.

11. Executive session pursuant to Chapter 551 of the Government Code to discuss personnel and pending or contemplated litigation with attorney.

12. Action, if required, on matters discussed in executive session.

13. Next regular meeting of the Board.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459–2601.
Filed: January 27, 1998, 9:30 a.m.

TRD-9801188

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Texas Cancer Council

Tuesday, January 27, 1998, 6:00 p.m.

Room 701, 211 East 7th Street

Austin

Board of Directors

EMERGENCY REVISED AGENDA:

Addendum to agenda: Discuss departure of the Executive Director and process for hiring replacement, and possibly take action concerning the Executive Director's departure, appointment of a selection committee to handle filling the vacancy, and operational matters relating to the transition. Discuss and possibly take action regarding the effects of the Texas tobacco lawsuit settlement on Council initiatives during FY 1998–2001.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Lisa Nelson at (512) 463–3190 five working days prior to the meeting so that appropriate arrangements can be made.

REASON FOR EMERGENCY: The Council must meet to discuss the Executive Director's announcement that she will be leaving the agency prior to the next Council meeting and take immediate action to begin the process to fill the vacancy. the Texas tobacco lawsuit settlement that was signed late last week affects projects funded by the Council. The council must take immediate action to prepare for the effects of the settlement on the allocation of funds. Posting is being supplemented because these two emergency matters arose after the posting deadline. These matters were not reasonably foreseen before posting, as authorized under Tex. Gov't. Code Ann., §551.045(b)(2).

Contact: Emily F. Untermeyer, P.O. box 12097, Austin, Texas 78711, (512) 463–3190.
Filed: January 26, 1998, 1:22 p.m.

TRD-9801153

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Wednesday, January 28, 1998, 9:00 a.m.

Dr. May Owen Conference Room, Texas Medical Association, 401 West 15th Street

Austin

Board of Directors

EMERGENCY REVISED AGENDA:

Addendum to agenda: Discuss departure of the Executive Director and process for hiring replacement, and possibly take action concerning the Executive Director's departure, appointment of a selection committee to handle filling the vacancy, and operational matters relating to the transition. Discuss and possibly take action regarding the effects of the Texas tobacco lawsuit settlement on Council initiatives during FY 1998–2001.

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Contact: Emily F. Untermeyer, P.O. box 12097, Austin, Texas 78711, (512) 463–3190.
Filed: January 26, 1998, 1:22 p.m.

TRD-9801152

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Texas Board of Chiropractic Examiners

Thursday, February 12, 1998, 9:30 a.m.

333 Guadalupe, Tower 3, Room 825

Austin

Enforcement Committee

AGENDA:

The Enforcement Committee of the Texas Board of Chiropractic Examiners will meet to consider, discuss, take any appropriate actions on cases to be held as Informals: # 97–53, 97–205, 97–208, 97–217, 97–180, 97–182, 97–226, 97–227, 98–01, 98–04, 98–08, 98–44 and 98–72.

Contact: John F. Zavala, 333 Guadalupe, Tower III, Suite 825, Austin, Texas, 78701, (512) 305–6708.
Filed: January 21, 1998, 2:17 p.m.

TRD-9800968

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Comptroller of Public Accounts

Thursday, February 5, 1998, 11:00 a.m.

LBJ State Office Building, 111 East 17th Street, Room 114

Austin

TexPool Advisory Board

AGENDA:

I. Call to Order

II. Discussion of Minutes

III. Update on Administration of TexPool by Texas Commerce Bank/ First Southwest Asset Management, Inc.

IV. Staff Briefing on TexPool Investments

V. Staff Briefing on TexPool Operations

VI. Independent Audit Report

VII. Adjournment

Contact: Steve Garven, 2001 10th Street, Austin, Texas 78701, (512) 463–5931.
Filed: January 23, 1998, 11:01 a.m.

TRD-9801049

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Texas Cosmetology Commission

Monday, February 9, 1998, 10:00 a.m.

5717 Balcones Drive, Conference Room

Austin

Commission Meeting

AGENDA:

Call to Order; Approval of Minutes from November 10, 1997, Commission Meeting and Possible Vote; Agreed Orders, and Possible Vote; Report on Town Hall Meetings; Discussion Regarding Edens Software Development and Written Examination Review Book, and Possible Vote – Randell Edens; Adoption of Proposed Rule 89.8, Student Registration, and Rule 89.13, Reducing, Increasing, or Withholding of Hours, and Possible Vote; Discussion of Tuition Protection Fund Procedure and Refund Policy, and Possible Vote. (Nhu Ngoc Pham); The commission will convene in executive session pursuant to Texas Government Code §551.071, to discuss any pending litigation including but not limited to Texas Association of Cosmetology School vs T.C.C., and T.C.C. vs Dana "Isis" Brantley, and §552.074, to discuss personnel matters; The commission will reconvene in open session, and possibly vote on any matters necessary as a result of its executive session; Adjourn.

Contact: Catherine Nahay, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755–0700, (512) 454–4674.
Filed: January 22, 1998, 1:47 p.m.

TRD-9801013

♦ ♦ ♦

Monday, February 9, 1998, 10:00 a.m.

5717 Balcones Drive, Conference Room

Austin

Commission Meeting

REVISED AGENDA:

Proposed Rule 89.1 for amendment to include new Rule 89.8, and Possible Vote.

Contact: Catherine Nahay, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755–0700, (512) 454–4674.
Filed: January 23, 1998, 11:01 a.m.

TRD-9801047

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Tuesday, February 10, 1998, 9:00 a.m.

5717 Balcones Drive, Conference Room

Austin

Joint Commission Meeting with Board of Barber Examiners

AGENDA:

Call to Order; Introductions; Discussion of Interagency Contract, and Possible Vote; Adjourn.

Contact: Catherine Nahay, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755–0700, (512) 454–4674.
Filed: January 22, 1998, 11:01 a.m.

TRD-9801014

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Office of Court Administration

February 16, 1998, 10:00 a.m.

State Capitol Extension Room E1.028

Austin

Texas Judicial Council Committee on Court Records

AGENDA:

I. Commencement of Meeting

II. Attendance of Members

III. Opening Remarks and Committee Update — Judge Mike Woods

IV. Committee Discussion of Public Access to Court Records

V. Public Testimony

VI. Other Business

VII. Adjourn.

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711, (512) 463–1625.
Filed: January 28, 1998, 10:10 a.m.

TRD-9801238

♦ ♦ ♦

Texas Department of Criminal Justice

Friday, January 30, 1998, 9:00 a.m.

Hilton Hotel, 2721 South 10th Street

McAllen

Texas Board of Criminal Justice

AGENDA:

I. Regular Session

A. Recognitions

B. Consent Items

C. Approval of the 66th Board of Criminal Justice Meeting Minutes

D. Board Liaison and Committee Reports/Division Summaries

E. Approval of Purchases Over One Million Dollars

F. Approval of a Resolution Authorizing a Request for Financing Through the Refinancing of Revenue Obligations for the Texas Department of Criminal Justice and Authorizing a Financing Agreement and Other Matters

G. Internal Audit Report

H. Report from the Judicial Advisory Council

I. Briefing on Contracting with Counties for Additional Bed Space

J. Rulemaking on Carrying Weapons

K. Revisions to the Inmate Disciplinary Rules

L. Proposed Board Policy 01.03 — Delegation of Authority to Manage and Administer the Texas Department of Criminal Justice

M. Proposed Amendment to Board Rule 37 TAC §152.51, Authorized Witnesses to the Execution of an Inmate Sentenced to die.

N. Report on Implementation of Legislation Effective January 1, 1998

O. Facility Issues

P. Approval to Release the Request for Bid for the Purchase of Four X-ray Machines

Q. Update on Sesquicentennial Monument

R. Presentation by the Texas Parks and Wildlife Department

II. Executive Session

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475–3250.
Filed: January 22, 1998, 4:21 p.m.

TRD-9801033

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Daughters of the Republic of Texas, Inc.

Thursday-Friday, February 19–20, 1998, 8:30 a.m.

Four Points Sheraton Hotel, 7800 North IH35

Austin

Board of Management

AGENDA:

The Daughters of the Republic of Texas, exercising an over abundance of caution, hereby notice a portion of the Board of Management meetings as an open meeting under the Texas Open Meetings Act, with regard to all matters pertaining to State owned properties which are under control of D.R.T., Inc.

Thursday, February 19, 1998, we convene at 8:30 a.m., Closed Session. 9:00 a.m. Open Session, Determination of Quorum, Reports of discussion preview to reports of committees operating State owned properties which are under the management or control of D.R.T., Inc., Alamo Committee, D.R.T. Library Committee, and French Legation. 12 Noon recess for lunch. 1:00 p.m. reconvene- Closed Executive Session — Determination of a Quorum.

Friday, February 20, 1998, 8:30 a.m. — Reconvene Closed Executive Session — Determination of Quorum. Noon- Adjourn.

Contact: Tookie Dempsey Walthall, 112 Moss Drive, San Antonio, Texas, 78213–1916, fax: (210) 344–3661.
Filed: January 26, 1998, 8:29 a.m.

TRD-9801112

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Texas Commission for the Deaf and Hard of Hearing

Saturday, February 7, 1998, 1:00 p.m.

Texas Commission for the Deaf and Hard of Hearing, 4800 North Lamar, Suite 250

Austin

Board for Evaluation of Interpreters

AGENDA:

Call to Order; Approval of Minutes — November 15, 1997 Meeting: Public Comment; Chairperson's Report; Vice Chair Report: Secretary Report; Staff Report; TSID Representative Report; Election of Officers; Executive Session; Review Interpreter Complaints and Candidate Grievances; Unfinished Business; Candidate Handbook, Test Validation and Analysis Training; New Business; Certification, Recertification, Revocation, Reinstatement, Reciprocity; Calendar Update; Announcements; Adjourn.

Contact: Margaret Susman, 4800 North Lamar boulevard, Austin, Texas 78756, (512) 407–3250, (512) 407–3251 (TTY).
Filed: January 28, 1998, 10:39 a.m.

TRD-9801245

Texas Planning Council for Developmental Disabilities

Thursday, February 12, 1998, 1:30 p.m.

Embassy Suites Hotel, 5901 IH35

Austin

Planning Committee

AGENDA:

Thursday, 1:30 p.m.

I. Call to Order

II. Introduction

III. Public Comments

IV. Approval of Minutes

V. Staff Report: Annual Program Performance Report

VI. Future TPCDD Funding Initiatives

VII. Operational Plan draft

5:00 p.m. Adjourn

Persons with disabilities who plan to attend this meeting and who may need ADA assistance, are requested to contact Karen Milby at (512) 424–4975, several days prior to the meeting.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424–4080.
Filed: January 28, 1998, 11:35 a.m.

TRD-9801257

♦ ♦ ♦

Thursday, February 12, 1998, 1:30 p.m.

Embassy Suites Hotel, 5901 IH35, Austin Room

Austin

Advocacy and Public Information Committee

AGENDA:

Thursday, February 12, 1998, 1:30 p.m.

I. Call to Order

II. Public Comments

III. Approval of Minutes of My 1, 1997 meeting

IV. Discussion of TPCDD input on Sunset Review Issues

V. Review and Discussion of State and Federal Policy and Legislation

VI. Public Information Report

5:00 p.m. Adjourn

Persons with disabilities who plan to attend this meeting and who may need ADA assistance, are requested to contact Susan Maxwell at (512) 424–4087, several days prior to the meeting.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424–4080.
Filed: January 28, 1998, 11:35 a.m.

TRD-9801258

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Texas Department of Economic Development

Tuesday, February 3, 1998, 1:30 p.m.

1700 North Congress Avenue, Room 300, Stephen F. Austin Building

Austin

Governing Board

AGENDA:

1:30 p.m. Call to order; 1:31 p.m. Recess into Executive Session pursuant to Government Code §551.075 to Receive Information from and Question Employees regarding Performance Based Budgeting and the Agency Budget Process; 3:30 p.m. Call back to order; Adjourn.

Contact: Susan Wilson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0158.
Filed: January 26, 1998, 4:33 p.m.

TRD-9801178

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Wednesday, February 4, 1998, 9:00 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin Building

Austin

Governing Board

AGENDA:

9:00 a.m. Call to order; Recess into Executive Session pursuant to Government Code §551.075 to Receive Information from and Question Employees regarding Performance Based Budgeting and the Agency Budget Process; Call back to order; Possible Action

on Salary Increase for Chief Administrative Officer; Approval of Minutes for January 7, 1998 Meeting; Agency Update; Review and Approval of Adoption of Rules Related to Procedures for the Governing Board; Repeal of Rules of Procedure Related to the Texas Department of Commerce Policy Board; Review and Approval of Resolution Creating Border Economic Action Task Force; Approval of Resolution to Seek Exemption from Salary Cap: Approval of Resolution to Seek Exemption from Travel Cap; Consider Authorizing the Publication of Proposed rules Amending the Rules for the Enterprise Zone Program; Authorize Texas Manufacturing Institute as Advisory Board to the Texas Department of Economic Development Board of Directors; Presentation of the Smart Jobs Fund Grants Awarded; Legislative Update; Agency Strategic Planning Overview; Public Comments; Board Comments; Adjourn.

Contact: Susan Wilson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0158.
Filed: January 27, 1998, 4:35 p.m.

TRD-9801213

♦ ♦ ♦

Wednesday, February 4, 1998, 11:20 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin Building

Austin

Texas Economic Development Corporation

AGENDA:

11:20 Call to Order; Approval of Minutes from Meeting of November 19, 1997; Amend By-Laws of the Texas Economic Development Corporation; Authorize Reimbursement of Re-location Expenses for Executive Director; Public Comments; Adjourn.

Contact: Susan Wilson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0158.
Filed: January 27, 1998, 4:49 p.m.

TRD-9801215

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State Board for Educator Certification

Friday, February 13, 1998, 9:30 a.m.

Plano ISD-Administration Center, 2700 West 15th Street

Plano

Finance Subcommittee

AGENDA:

1. Review of SBEC's financiel position.

2. Discuss mandated options for budget surpluses.

3. Develop a proposal for the board to consider during the next scheduled meeting.

Contact: Denise Jones, State Board of Educator Certification, P.O. Box 2603, Austin, Texas 78701–2603, (512) 469–3005.
Filed: January 27, 1998, 3:54 p.m.

TRD-9801205

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State Employee Charitable Campaign

Monday, February 23, 1998, 3:00 p.m.

SH 191 and FM 1788, C.E.E.D. (UT Permian Basin)

Odessa

Local Employee Committee Midland/Odessa

AGENDA:

1. Call to order

2. Reading of minutes of January 14, 1998

3. Results of the 1997 Campaign

4. Acknowledgment/ "Thank You"

5. 1998 Timetable/Calendar

6. Selection of LCM

7. Issues for SPC Roundtable

Contact: Percy Symonette, United Way of Midland, 1209 West Wall, Midland, Texas 79701, (915) 685–7700.
Filed: January 26, 1998, 11:58 a.m.

TRD-9801148

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General Land Office

Tuesday, February 3, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; lease suspension application, Gulf of Mexico, Cameron Co.; Brookes Tiffany (Delaware) Field, Reeves Co.; Giddings Austin Chalk Gas Field, Washington Co.; Giddings Austin Chalk Gas Field, Washington Co.; Sralla Road (Jackson, W) Field, Harris Co.; Wildcat Field, Galveston Co.; Wildcat Field, Matagorda Co.; Wildcat Field, Chambers Co.; Umbrella Point NE (Price Sand) Field, Chambers Co.; Umbrella Point (F-28), Chambers Co.; Wildcat field, Chambers Co.; Keystone field, Winkler Co.; application to lease highway rights of way for oil and gas, Highway 158, Glasscock Co.; F.M. 389, Washington Co.; US Highway 290, Bastrop Co.; Baranowski Road, Washington Co.; Old San Antonio Rd., Brazos and Robertson Cos.; US Hwy 77 North, Fayette Co.; Consideration of additional tracts, terms, conditions and procedures for the April 7, 1998 oil, gas and other minerals lease sale; consideration of amendment to terms of a direct land sale, File 64794, Borden County, approved by the Board on 1/6/98; Coastal Public Lands- easements applications, renewals and amendments, Galveston Bay, Chambers Co.; Dickinson Bay, Galveston Co.; Laguna Madre, Cameron Co.; Clear Lake, Galveston Co.; Carancahua Bay, Calhoun Co.; structure (cabin) permit amendment, Espiritu Santo Bay, Calhoun Co.; Closed Session and Open Session — consideration of sale of .81 acres located at Cesar Chavez and Trinity, Austin, Travis Co.; Closed Session and Open Session — status report on marketing of permanent school fund land located on the Riverwalk, San Antonio, Bexar Co.; Closed Session and Open Session — discussion regarding disposition and related issues concerning Paseo Del Este, El Paso Co.; Closed Session and Open Session — discussion of potential acquisition of approximately 51,000 acres located in Val Verde Co.; Closed Session and Open Session — status report on royalty underpayment claims at issue in Cause 9713874, TransTexas Gas Corp. v. Texas General Land Office, v. TransTexas GasCorp., Conoco, Inc., and First Union Bank of Connecticut; Closed Session and Open Ses-

sion — consideration of proposed settlement agreement with certain defendants, Cause 97–12328, State v. Langdon et al; Closed Session and Open Session — pending or contemplated litigation or settlement offers.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463–5016.
Filed: January 26, 1998, 3:14 p.m.

TRD-9801161

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Office of the Governor

Thursday-Friday, February 5–6, 1998, 10:00 a.m.

1400 North Congress, Texas Capitol Extension, Room E1.036

Austin

Texas Strategic Economic Development Planning Commission

AGENDA:

I. Call to Order open meeting/ Quorum Call — Chairman Steve Stephens

II. Approve Minutes from previous meetings

III. Invited state agency testimony on economic development barriers in Texas

IV. Invites private sector testimony on economic development barriers in Texas

V. Discussion and update on consultant process

VI. General Discussion

VII. Adjourn

Contact: Terry Karrow or Jim Glotfelty, P.O. Box 12428, Austin, Texas 78701, (512) 463–2198.
Filed: January 23, 1998, 12:18 p.m.

TRD-9801064

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Thursday, February 12, 1998, 10:00 a.m.

8901 Business Park, Austin, Texas 78759

Austin

Texas Crime Stoppers Advisory Council

AGENDA:

I. Call to Order open meeting/ Quorum Call — Chairman Steve Stephens

II. Approval of Minutes

III. Report from Crime Stoppers Staff: Education Steering Committee meeting December 5, 1997

IV. Report from Educational Steering committee and Host Program on approval of agenda speakers and conference activities for Campus Crime Stoppers conference Scheduled for April, 1998, Odessa, Texas

V. Report from Mary Garrett and Associates, post-conference report, Specialized Topics Conference, October 1997

VI. Discuss the future of the Texas Crime Stoppers Advisory Council in regards to Chapter 2110 of the Texas Government Code.

VII. Discuss the request for an Attorney General's Opinion interpreting Legislation pertaining to Crime Stoppers

VIII. Approve Awards for Campus Crime Stoppers Conference

IX. Set next Advisory Council meeting date

X. Open Forum

XI. Adjourn

Contact: Darrell Bush, P.O. Box 1165, Nederland, Texas 77627, (409) 723–1525.
Filed: January 28, 1998, 11:06 p.m.

TRD-9801253

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Texas Department of Health

Friday, January 30, 1998, 9:30 a.m.

Moreton Building, Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

Oral Health Services Advisory Committee (OHSAC)

AGENDA:

The committee will discuss and possibly act on: approving the minutes of the June 6, 1997 meeting; election of officers for fiscal year 1998; approval of the OHSAC annual report for 1997 to the Texas Board of Health; review of revised draft of rules for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) dental services (25 Texas Administrative Code, Chapter 33); progress report on the Title XXI Children's Health Insurance Plan (CHIP); drafting of resolution for CHIP; progress report on access to care; dental education program funding; review of the methods for prior authorization for dental services under general anesthesia; public comment; and the setting of the next meeting date and agenda items for the committee.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Karl Shaner, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7111, ext. 2097).
Filed: January 22, 1998, 11:12 a.m.

TRD-9801002

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Friday, February 13, 1998, 1:00 p.m.

Room 3.102, Joe C. Thompson Convention Center, 26th and Red River Streets

Austin

Emergency Health Care Advisory Committee

AGENDA:

The committee will meet in open session and will discuss and possibly act on: approval of the minutes of the last meeting; associate commissioner's report; bureau chief's report; appointments of subcommittees by the committee chair; subcommittee/task force reports (Funding Task Force; Trauma Subcommittee; Pediatric Subcommittee; Emergency Medical Services Subcommittee; and the Public Education/Prevention Task Force); project alpha task force; Senate Bill 102 funding formula; Sunset (recommendations by

emergency physicians through the Texas Medical Association; and announcement regarding the legislative forum in May); Emergency Health Care Advisory Committee's (EHCAC) input into new bureau projects as developed; and assistance to the bureau in the budget process for the next fiscal year. The committee will enter executive session to discuss and possibly act on: reappointment of two-year EHCAC members; and the vacant consumer position to be filled. The committee will return to open session to discuss and possibly act on: an announcement of the results of the executive session; public comments; and confirmation of 1998 meeting dates of the committee.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Debby Hilliard, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6740.
Filed: January 23, 1998, 2:52 p.m.

TRD-9801072

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Texas Department of Health, Council on Sex Offender Treatment

Friday, February 6, 1998, 8:00 a.m.

Moreton Building, Room M-117, Texas Department of Health, 1100 West 49th Street

Austin

Rules Committee

AGENDA:

The committee will discuss and possibly act on: rule revisions (40 Texas Administrative Code, Chapters 510–513); other business not requiring action; and public comment. r.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: January 28, 1998, 11:07 a.m.

TRD-9801254

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Friday, February 6, 1998, 9:30 a.m.

Moreton Building, Room M-117, Texas Department of Health, 1100 West 49th Street

Austin

Clinical Issues Committee

AGENDA:

The committee will discuss and possibly act on: adoption of the minutes of the last meeting; recommended polygraph guidelines' revisions; Attorney General Opinion DM-458; assessment recommendations; other business not requiring action; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: January 28, 1998, 11:07 a.m.

TRD-9801255

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Friday, February 6, 1998, 8:00 a.m.

Moreton Building, Room M-117, Texas Department of Health, 1100 West 49th Street

Austin

Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee

AGENDA:

The council will discuss and possibly act on: adoption of the minutes of the last meeting; council chair position; election of Interagency Committee chairperson; executive director's report; Texas Department of Health's Professional Licensing and Certification Division report (transfer of duties to the office of the Attorney General; council's possible decision on transfer of duties); committee reports (Rules Committee; Clinical Issues Committee; additional state agency appointments to the Interagency Committee; and the Senate Interim Committee on Sex Offenders Hearing Testimony); other business not requiring action (biennial report; and the strategic plan); and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Grace L. Davis, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4530.
Filed: January 28, 1998, 11:07 a.m.

TRD-9801256

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Texas Health Care Information Council

Tuesday, February 3, 1998, 1:00 p.m.

Brown-Heatly Building, Room 3501, 4900 North Lamar Boulevard

Austin

Quality Methods and Consumer Education Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Quality Methods and Consumer Education Technical Advisory Committee will convene in open session, deliberate, and possibly take action on the following items: minutes of November 4, 1997; recommendations relating to Consumer Education Report from the Communication Planning Session of the Council; recommendations concerning TAC membership; and, development and adoption of methodology to apply to provider quality data files.

Visitors to and participants in meetings at the Brown-Heatly Building are advised to check with the Security Guard in order to obtain a permit for parking at the Winters Complex, across Lamar Boulevard. The use of public transit is advised. Handicapped parking spaces are available adjacent to the entrance of the Brown-Heatly Building.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 at TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424–6492, fax: (512) 424–6491.
Filed: January 22, 1998, 1:47 p.m.

TRD-9801015

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State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Saturday, February 28, 1998, 10:00 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

Complaints Subcommittee

AGENDA:

The subcommittee chairperson will introduce guests and elicit comments; and the subcommittee will discuss and possibly act on: complaints (FD 96–0024; FD 96–0025; FD 96–0026; FD 97–0008; FD 97–0021; FD 97–0027; FD 97–0028; FD 97–0029; FD 97–0031; FD 97–0032; FD 97–0034; FD 98–0001; FD 98–0002; FD 98–0003; FD 98–0004; FD 98–0005; FD 98–0006; FD 98–0007; FD 98–0008; FD 98–0009; FD 98–0010; and other business not requiring action.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6784.
Filed: January 22, 1998, 11:12 a.m.

TRD-9801003

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Texas Higher Education Coordinating Board

Friday, February 6, 1998, 9:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100B, 7700 Chevy Chase Drive

Austin

Advisory Committee on Core Curriculum

AGENDA:

Review comments from institutions and the web site regarding the draft report on a 42 semester credit hour core curriculum, and finalize the report; and Review comments regarding the revisions to subcommittee reports, and decide on recommendations to be offered with those reports.

Contact: Julie Leidig, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483–6250.
Filed: January 27, 1998, 8:06 a.m.

TRD-9801181

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Texas Historical Commission

Friday, January 30, 1998, 8:00 a.m.

Carrington-Covert House, 1511 Colorado Street

Austin

Executive Committee Meeting

REVISED AGENDA:

IX. Resolution Supporting Local Preservation Incentives

X. New Business

XI. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463–6100.
Filed: January 21, 1998, 4:15 p.m.

TRD-9800981

♦ ♦ ♦

Friday, January 30, 1998, 10:00 a.m.

William P. Clements Building/Fifth Floor Committee Room 2, 300 West 15th Street

Austin

Quarterly Board Meeting

REVISED AGENDA:

V. Action Items

5.5 Resolution Supporting Local Preservation Incentives

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463–6100.
Filed: January 21, 1998, 4:15 p.m.

TRD-9800980

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Texas Department of Insurance

Tuesday, February 17, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–97–2107.G — Hearing in the matter of Residential Property Benchmark Rates.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: January 28, 1998, 11:00 a.m.

TRD-9801248

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Tuesday, February 17, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–97–2359.C — To consider the application of JIMMY GAYLE LOCKLEAR, Dallas, Texas for a Group I, Legal Reserve life Insurance Agent's licence to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: January 28, 1998, 11:00 a.m.

TRD-9801249

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Tuesday, February 17, 1998, 1:00 p.m.

State Office of Administrative Hearings, 1225 Agnes Street, Suite 102

Austin

AGENDA:

Docket No. 454–97–2293.E — In the Appeal by Ken Hulsey from a decision of the TEXAS WINDSTORM INSURANCE ASSOCIATION.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: January 28, 1998, 11:01 a.m.

TRD-9801250

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Thursday, February 19, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–97–2223.C — To consider whether disciplinary action should be taken against ARTURO J. ACUNA, Orange Grove, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Local Recording Agent's License, and Managing General Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: January 28, 1998, 11:01 a.m.

TRD-9801251

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Thursday, February 19, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–97–2224.C — To consider whether disciplinary action should be taken against FRANK BARRIENTEZ, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Local Recording Agent's License, and Managing General Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: January 28, 1998, 11:01 a.m.

TRD-9801252

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Texas Board of Professional Land Surveying

Friday, February 6, 1998, 9:00 a.m., Continued February 7, 1998

7701 North Lamar, Suite 400

Austin

Board Meeting

AGENDA:

On February 6, 1998 the Board will be called to order, Introductions, the Board will consider and act upon the following matters: comments from the public, Angeline Bayer regarding a complaint filed and need for surveying services, Keith McNease regarding waiver of two year SIT experience, approval of December 12, 1998 minutes; director's report; Travel Regulations and NCEES Southern Zone Meeting, Nominations of Associate and Emeritus members, performance measures, Executive Director's Evaluation, Active Complaints and Show Cause Actions (Exhibit A), Committee Reports: RPLS Examination Committee, Oil Well Issues Committee, Legislation Needs, Rules, Correspondence, from Billy Evans regarding Board Rule 663.15, from James Steward regarding lapsed registration, from Darren Brown regarding review of examinations, from Rokshad Faizi Khan regarding SIT waiver: Other Business: List of Courses meeting requirements of §15, Definitions of Professional Land Surveying/Use of Seal and Title, Non Licensed owners of surveying firms, request for mortgage (Survey), Inspection Letters, Future Agenda Items and Meetings, comments from the public. Review of application and selection of April examination. The February 6th meeting will recess at the end of the working day and reconvene on February 7 for the completion of business.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print, or braille are requested to contact Sandy Smith (512) 452–9427 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452–9427.
Filed: January 26, 1998, 3:37 p.m.

TRD-9801163

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Texas Appraiser Licensing and Certification Board

Wednesday, February 4, 1998, 12:30 p.m.

Executive Conference Room 235A, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Call to order; discussion and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board concerning complaints and agreed orders for complaint files numbered: 95–005, 95–012, 96–010, 96–012, 96–018, 96–019, 96–002, 96–024, 96–031, 97–006, 97–011, 97–015, 97–020, 97–023, 97–028, 98–003, 98–004, 98–005, 98–006, 98–007, 98–008, 98–009, 98–010, 98–011, 98–012, 98–013, 98–014, 98–015; and enforcement and complaint resolution policies and procedures; 1:00 p.m.: Informal conference with respondent and/or complainant concerning complaint file numbered 97–011; and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board; 2:00 p.m. Informal conference with respondent and/or complainant concerning complaint file numbered 97–028; and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certifiation Board; Recess: Reconvene immediately following the TALCB Meeting, Thursday, February 5, to conclude unfinished business. Adjourn.

Contact: Renil C. Liner, P.O. Box 121288, Austin, Texas 78711–2188, (512) 465–3950.
Filed: January 27, 1998, 9:47 a.m.

TRD-9801191

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Thursday, February 5, 1998, 8:00 a.m.

TALCB Conference Room 204, 1101 Camino La Costa

Austin

Education Committee

AGENDA:

Call to order; Consideration and possible adoption of the minutes of the December 10, 1997, Education Committee meeting; Discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning policies, procedures, rules and requirements including qualifying education, appraiser continuing education (ACE), examinations, TALCB Rules (22 TAC §153), the TALC Act (Art. 7673a.2, V.T.C.S.), Appraiser Qualifications Board (AQB) criteria and interpretations, distance education, course approval vs. acceptance, acceptability of TREC mandatory continuing education (MCE) courses, scope of practice and Uniform Standards of Professional Appraisal Practice (USPAP) courses and requirements, and a National Uniform Appraisal Examination; Discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board on possible amendments to the TALCB rules, 22 TAC §153.1 relating to Definitions, §153.13 relating to Educational Requirements, §153.18 relating to Appraiser Continuing Education, and new §153.8 relating to Scope of Practice; Discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning approval of courses for meeting qualifying (pre-licensure) education and appraiser continuing education (ACE) requirements; Discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning other educational or examination matters; Adjourn.

Contact: Renil C. Liner, P.O. Box 121288, Austin, Texas 78711–2188, (512) 465–3950.
Filed: January 27, 1998, 9:47 a.m.

TRD-9801190

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Thursday, February 5, 1998, 10:00 a.m.

TALCB Conference Room 235, 1101 Camino La Costa

Austin

AGENDA:

Call to order; Election of Officers pursuant to §6(f) of the Texas appraiser Licensing and Certification Act (Article 6572a.2, V.T.C.S.); Comments by the Chair; Consideration and possible approval of the minutes of the December 11, 1997 TALCB meeting; Staff reports; discussion and possible action concerning active certifications and licenses; certifications and licenses issued; applications; renewals; examinations; experience verification audits; new enforcement position; TALC *Appraiser Report*; federal activities and guidelines; Exposure Draft of Proposed Revisions to USAPAP; First Quarter Report on Measures; testimony before the Senate Finance committee regarding performance measures; and the AARO conferences; Report from the Education Committee; discussion and possible action concerning recommendations of the Education Committee, regarding educational requirements; approval of courses for meeting educational requirements, and other educational matters from the February 5, 1998, Education Committee meeting; Discussion and possible action to publish in the *Texas Register* proposed rules, as recommended by the Education Committee, 22 TAC §153.1 relating to Definitions, §153.13 relating to Educational Requirements, §153.18 relating to Appraiser Continuing Education, and new §153.1 153.8 relating to Scope of Practice; Report from the Budget Committee; discussion and possible action regarding the FY 1998 operating budget; Board and staff travel, and other fiscal matters; Report from the Enforcement Committee; discussion and possible action concerning recommendations from the January 21, 1998 Enforcement Committee Workshop regarding policies, procedures, guidelines, processes, and rules relating to enforcement, complaint resolution, investigations, peer review, unlicensed activity, jurisdiction, penalties and sanctions, enforcement/investigator position and other enforcement related issues, including 22 TAC §151, Rules Relating to Practice and Procedure, §153, Rules relating to Provisions of the Texas Appraiser Licensing and Certification Act, §155, rules Relating to Standards of Practice and the Texas Appraiser Licensing and Certification Act, (Art. 6573a.2, V.T.C.S.); Report from the Enforcement Committee: consideration and possible action concerning complaints and agreed orders for complaint files numbered: 95–005, 95–012, 96–010, 96–012, 96–018, 96–019, 96–002, 96–024, 96–031, 97–006, 97–011, 97–015, 97–020, 97–023, 97–028, 98–003, 98–004, 98–005, 98–006, 98–007, 98–008, 98–009, 98–010, 98–011, 98–012, 98–013, 98–014, 98–015; and enforcement and complaint resolution policies and procedures; Comments and presentations from visitors; Selection of dates of subsequent meetings; Adjourn.

Contact: Renil C. Liner, P.O. Box 121288, Austin, Texas 78711–2188, (512) 465–3950.
Filed: January 27, 1998, 10:05 a.m.

TRD-9801194

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Texas Lottery Commission

Wednesday, February 4, 1998, 10:00 a.m.

611 East Sixth Street, Grant Building, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

According to the complete agenda, the Bingo Advisory Committee Chair will:

Call the meeting to order; consideration and possible approval of the minutes of the September 30, 1997 Committee Meeting; consideration, public comment, and possible action, including recommendations on the interpretation of the statutory definition of "gross receipts" as it is applicable to cardminding devices and/or cardfaces played through a cardminding device; consideration, public comment, and possible action, including recommendations, on proposed amendments to 16 TAC §402.554, concerning instant bingo; status report, possible discussion, and possible action, including recommendations, on seeking an Attorney General Opinion concerning the constitutionality of the Bingo Enabling Act statutory provision regarding instant bingo symbols; consideration, public comment, and possible action, including recommendations on proposed amendments to 16 TAC §402.555, concerning cardminding devices; consideration and possible action on the status of advisory committees; status report, possible discussion, and possible action, including recommendations, on the Charitable Bingo Operations Director position; status report, possible discussion, and possible action regarding the training program referenced in the Bingo Enabling Act; report, possible discussion, and possible action on a January 7, 1998 Internal Revenue Service

letter relating to the winnings for recipients of instant bingo prizes; consideration, possible discussion, and possible action, including recommendations, on issues relating to door prizes and raffles; consideration, possible discussion, and possible action, including recommendations, on the interaction, relationship, and communication between the Bingo Advisory Committee and the Charitable Operations Division; consideration, possible discussion, and possible action, including recommendations, on the requirement of charitable organizations to pay sales tax when purchasing bingo supplies; consideration, possible discussion, and possible action, including recommendations, on the Attorney General Opinion Number DM-466 concerning "eight-liners"; and adjournment.

For ADA assistance, call Worlanda Neal at 344–5120 at least two days prior to meeting.

Contact: Michelle Bernal-Guerrero, P.O. Box 16630, Austin, Texas 78761, (512) 344–5113, fax: (512) 344–5189.
Filed: January 27, 1998, 9:52 a.m.

TRD-9801192

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Texas Medical Liability Insurance Underwriting Association (JUA)

Monday, February 23, 1998, 3:00 p.m.

5901 North IH35, Embassy Suites Hotel

Austin

Executive Committee

AGENDA:

1. Review and possible action on 1997 Annual Statement to be filed with the Texas Department of Insurance; compiled schedules of loss and loss adjustment expenses, financial statements and budget.

2. Review and possible action on criteria to be used in the selection of any life insurance company to provide annuities used in structured settlement of claims.

3. Fourth Quarter 1997 status report.

4. Report from legal counsel.

5. Resolution of Appreciation and action regarding Dr. Norman L. Mason

6. Review and possible action on enhanced Telephone Test Key security for funds transfer initiated by telephone.

7. Consider and possible action on date and location for next meeting.

8. Adjournment.

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: January 23, 1998, 11:01 a.m.

TRD-9801054

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Tuesday, February 24, 1998, 9:00 a.m.

5901 North IH35, Embassy Suites Hotel

Austin

Board of Directors

AGENDA:

1. Consideration and action on Children's Medical Center of Dallas appeal for reversal of JUA position pertaining to application submitted for policy covering the annual period beginning January 1, 1998.

2. Approval of Minute 132 and Minute 133.

3. Review and possible action on 1997 Annual Statement to be filed with the Texas Department of Insurance; compiled schedules of loss and loss adjustment expenses, financial statements and budget.

4. Review and possible action on criteria to be used in the selection of any life insurance company to provide annuities used in structures settlement of claims.

5. Fourth Quarter 1997 status report.

6. Report from legal counsel.

7. Resolution of Appreciation and action regarding Dr. Norman L. Mason.

8. Review and possible action on enhanced Telephone Test Key security for funds transfer initiated by telephone.

9. Consider and possible action on date and location for next meeting.

10. Adjournment

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: January 23, 1998, 11:01 a.m.

TRD-9801053

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Texas Natural Resource Conservation Commission

Wednesday, February 4, 1998, at 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Hearing Request; District Matters; Municipal Waste Discharge Enforcement Greed Orders; Municipal Waste (Authorization to Construct) Air Enforcement Agreed Orders; Air Enforcement Default Order; Industrial Waste Discharge Enforcement Agreed Orders; Public Water supply Enforcement Agreed Orders; Petroleum Storage Tank Enforcement Agreed Order; Petroleum Storage Tank Default Order; Multi-Media Enforcement Agreed Order; Industrial Hazardous Waste Enforcement Agreed Order; Waterworks Operation Certification Agreed Order; Resolution; Agricultural Matter; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date and time. (Registration for 9:30 agenda starts 8:45 a.m. until 9:25.) The commission will consider the following matters at its 1:00 p.m. agenda; Proposal for Decision. (Registration for the 1:00 p.m. agenda will start at 12:30 p.m. until 1:00 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: January 26, 1998, 3:33 p.m.

TRD-9801162

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Wednesday, February 4, 1998, 9:30 a.m.

TNRCC Park 35 Office Complex, Building F, Room 2210, 12100 North IH35

Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the addendum to the agenda: Authorizations to Construct and Rule.

Contact: Mary Ambrose, TNRCC, P.O. Box 13087, Austin, Texas 78701, (512) 239–4800.
Filed: January 27, 1998, 3:24 p.m.

TRD-9801203

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Thursday, February 19, 1998, at 1:30 p.m.

TNRCC Park 35 Office Complex, Building F, Room 2210, 12100 North IH35

Austin

Texas Groundwater Protection Committee

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss; subcommittee reports from Agricultural Chemicals, Data Management, Nonpoint Source, and Water Well Closure; presentation from Bureau of Economic Geology, Set future meeting dates; status update from Joint Monitoring and Contamination Report, Texas Comprehensive State Ground Water Protection Program Process Update, Priority Groundwater management Area Status Update, Risk Reduction Rules Update, TNRCC Rules update and public comment.

Contact: Mary Ambrose, TNRCC, P.O. Box 13087, Austin, Texas 78701, (512) 239–4800.
Filed: January 28, 1998, 8:25 a.m.

TRD-9801218

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Texas Board of Orthotics and Prosthetics

Monday, February 9, 1998, 10:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Rules Workshop

AGENDA:

The board will introduce members, guests and staff and will discuss and possibly act on: presentation by fact finding teams and board discussion; other matters not requiring board action; public comment; and future agenda items.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin or Steven Lowenstein, 1100 West 49th Street, Austin, Texas 78756, (512) 834–4520.
Filed: January 26, 1998, 1:41 p.m.

TRD-9801154

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Texas State Board of Pharmacy

Tuesday, February 10, 1998, 9:00 a.m.

333 Guadalupe Street, Suite 2–225

Austin

Board Business Meeting

AGENDA:

The Board will commence in open session to: (1) hear announcements concerning personnel (2) discuss for approval November 18–19, 1997, Board business Meeting Minutes (3) consider for adoption amendments to §283.2 and §283.4 concerning the expiration date for internship designation, new rules §§291.51–291.55 and repeal of rules §§291.51–291.54 concerning Class B (Nuclear) Pharmacies; the review of Class B (Nuclear) Pharmacy Rules; amendments to §305.1 concerning pharmacy education requirements; and review of Chapter 305 concerning educational requirements; (4) receive Final report of the Task Force on Narrow Therapeutic Index Drugs; (5) Discuss proposal of amendments to §309 concerning prescription drug orders and narrow therapeutic index drugs; and Review of Chapter 309 (309.1–309.8) concerning generic substitution; (6) discussion of and possible action on: current financial update; Senate Finance Subcommittee Hearing Update; Publication of Names of Licensees in *TSBP Newsletter*; Request to the Texas Higher Education Coordinating Board Concerning the Offering of the External PharmD Degree by the four Texas Colleges of Pharmacy and discontinuation of the Bachelor of Science in Pharmacy Degree; SOAH Rules and amendments to the Rule Review Plan; Multistate Pharmacy Jurisprudcence Examination (MPJE™) State Letter of Agreement with NBP; Days for Board Meetings in FY 1999; Request from International Academy of Compounding Pharmacies to Make presentation to Board; (7) receive reports regarding the Task Force on Immunization; Task Force on Pharmacists' Working Conditions; Task Force on Technician Training; Health Professions Council; Strategic Plan for Period 1999–2004; On-site visit to mail service pharmacy; status of active/pending complaints (8) consider and take action on Proposed Agreed Board Orders; (9) Executive Session to consider confidential Agreed Board Orders (10) Board Member/Staff recognition of appointments and awards; (11) discuss items for May 1998 Board meeting; (12) Discuss procedures and concerning performance review of Executive Director; (13) reports on recent and upcoming conferences and events.

Contact: Texas Board of Pharmacy, Box 21, Austin, Texas 78701–3842, (512) 305–8000.
Filed: January 28, 1998, 10:07 a.m.

TRD-9801236

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Texas State Board of Plumbing Examiners

Thursday, January 29, 1998, 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

January 29, 1998, 9:00 a.m. — Call to order and roll call.

Consideration of Minutes of 12/1/97 Enforcement Committee Meeting for Adoption as Recorded.

Informal Conference: Discussion and possible action on the following case with the individual who has agreed to appear: Case # 980081 — Time — 10:00 a.m.

Review of Citation List and possible action.

Review of Applicants with Past Criminal Convictions and possible action.

Consideration of and possible action on cities with more than 5,000 inhabitants that have no licensed plumbing inspectors.

Complaint Cases for Review: The following cases will be reviewed by and possibly acted upon by the Committee as time allows. Time may not allow for all cases listed to be reviewed:

Case #'s: 97–0772, 96–0198, 97–0332, 97–0451, 97–0455, 97–0608, 97–0634, 97–0745.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458–2145, extension 233.
Filed: January 21, 1998, 3:14 p.m.

TRD-9800975

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Tuesday, February 3, 1998, 9:00 a.m.

929 East 41st Street

Austin

Continuing Education Committee

REVISED AGENDA:

7. Discussion and possible action on setting up Disciplinary Procedures for Instructors and Providers.

8. Discussion and possible action on changing the reporting based on the Scantron System as provided by PECT so as to make comparisons easier to utilize.

Contact: Stephanie A. Spiars, 929 East 41st Street, Austin, Texas 78751, (512) 458–2145, extension 222.
Filed: January 23, 1998, 1:14 p.m.

TRD-9801065

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Wednesday, February 11, 1998, 9:00 a.m.

929 East 41st Street

Austin

Examination Committee

AGENDA:

1. Roll Call— 9:00 a.m.

2. Recognize staff members and visitors.

3. Discussion and possible recommendation to board to charge a fee to reschedule applicants who fail to appear as scheduled for examination.

4. Discussion and possible recommendation to board on developing a bank of questions for all plumbing examinations to be installed on computer that will allow for random selection.

5. Discussion and possible recommendation to board on allowing language translation of examination.

6. Discussion on procedures for making changes to Plumbing examinations.

7. Date, Location, and time of next meeting.

8. Adjournment.

Contact: Stephanie A. Spiars, 929 East 41st Street, Austin, Texas 78751, (512) 458–2145, extension 222.
Filed: January 23, 1998, 9105 a.m.

TRD-9801043

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Texas Department of Protective and Regulatory Services

Friday, January 30, 1998, 10:00 a.m.

Texas Department of Health, Tower Building, Room T407, 1100 49th Street

Austin

Child Fatality Review State Committee Meeting

AGENDA:

Welcome and Introductions. Reports; Coordinator Report; CTF/ Video Update; Priority Counties for New Teams; Child Mortality Update; Perinatal Update; Hospital Neonatal Death Reviews. Old Business: Comm to work on SIDS Legislation; Child Passenger Restraints/Legis. Lunch. Old Business cont.; State Committee Appts.; Investigation Protocol Manual; 1998 Network Meeting; Newsletter Update; Data collection form. New Business: Biennial report. Adjourn.

Contact: Janece Keetch, P.O. Box 149030, Austin, Texas, 78714–9030.
Filed: January 22, 1998, 10:44 a.m.

TRD-9800995

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Texas State Board of Examiners of Psychologists

Thursday-Friday, February 19–20, 1998, 8:30 a.m.

333 Guadalupe, Suite 2–400A

Austin

AGENDA:

The Board will meet to consider public comments; minutes of the last meeting; the licensed specialist in school psychology; legal matters; planning for the next meeting; a report from the Board liaison to the Psychological Associate Advisory Committee; and reports from the chair of the Board, the Executive Director and the following committees: Applications, Budget, Complaint and Enforcement, Continuing Education, Evaluation, Information Technology, Newsletter, Oral Examination, Personnel, Policies and Procedures, Public Information, Reciprocity, Rules, and Written Examinations. The Board will consider dismissals of allegations for ratification and proposed and adopted rules. The Board will hold an executive session to seek legal advice, and the new Board members will be introduced.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2–450, Austin, Texas 78701, (512) 305–7700.
Filed: January 22, 1998, 2:30 PM.

TRD-9801020

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Public Utility Commission of Texas

Thursday, February 26, 1998, 10:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Second Prehearing Conference will be conducted in Docket Number 18490– Joint Application to Reduce Texas Utilities Electric Company Base Rates and Approval of Certain Accounting Procedures.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: January 26, 1998, 3:09 p.m.

TRD-9801158

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Wednesday, March 4, 1998, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be conducted in Docket Number 18490– Joint Application to Reduce Texas Utilities Electric Company Base Rates and Approval of Certain Accounting Procedures.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: January 26, 1998, 3:09 p.m.

TRD-9801159

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Monday, March 9, 1998, 10:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Second Prehearing Conference will be conducted in Docket Number 18465– Application of HL&P for a Change in Accounting Procedures and Approval of Certain Base Rate Credits.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: January 26, 1998, 3:09 p.m.

TRD-9801160

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Texas Department of Public Safety

Thursday, February 12, 1998, 3:00 p.m.

5805 North Lamar Boulevard

Austin

Governor's Division of Emergency Management, Drought Response and Monitoring Committee

AGENDA:

Welcome and Introductions

Technical Assistance and Planning Subcommittee Report

Drought and Water Supply Monitoring Subcommittee Report

Action Items: Review of last meeting minutes and On-Going strategies

Other Issues and Concerns

Adjournment

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact DeDe McKee at (512) 424–5989 three work days prior to the meeting so that appropriate arrangements can be made.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 7877309229, (512) 424–2452.
Filed: January 22, 1998, 1:01 p.m.

TRD-9801008

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Texas Low-Level Radioactive Waste Disposal Authority

Friday, February 13, 1998, 10:00 a.m.

7701 North Lamar Boulevard, Suite 300

Austin

Board of Directors

AGENDA:

The board will convene the public meting and adjourn for an executive session to receive advice of the Authority's attorneys concerning contemplated litigation related to the Authority's license application pending before the Texas Natural Resource Conservation Commission (TNRCC). The board will open the meeting to the public to approve minutes of their previous meeting; her the general manager's reports on the year-to-date financial status, consider a request for a budget adjustment; discuss the status of the license hearings before SOAH, discuss the status of the Texas and other federal low-level waste compacts; review quarterly contract reports; hear a report on the community development and working groups, public information program, and the quality assurance program. The board will discuss the purchase of director's and officer's liability insurance; consider the repeal of rules regarding public information; and consider amendments to the Bickerstaff, heath, Smiley, Pollan, and Kever contract; consider approval of a contract with Fulbright and Jaworski for bond counsel services; consider the approval of an amendment to the Hudspeth County Master Plan; and consider adoption of the Hudspeth County Master Plan for FY 998; consider the authorization for rule-making to adopt planning and implementation fees for FY 1998. The board will hear public comments before adjourning.

Contact: Lawrence R. Jacobi, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451–5292.
Filed: January 28, 1998, 10:55 a.m.

TRD-9801246

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Texas Real Estate Commission

Monday, February 2, 1998, 9:30 a.m.

TREC Headquaraters, 1101 Camino La Costa

Austin

AGENDA:

Call to order; Minutes of December 15, 1997 Commission meeting; Election of vice-chairperson and secretary; Staff reports; committee reports; General comments from visitors; Discussion of proposed: (a) amendments to 22 TAC §537.11, relating to standard contract forms; (b) amendment to 22 TAC §537.42, relating to agreement for mediation; (c) amendments to 22 TAC §§535.1–535.4, 535.12–535.20, 535.31–535.41, and 535.51–535.7–, relating to provisions of The Real Estate License Act; Discussion and possible action to adopt amendments to 22 TAC §§531.1–531.3, relating to canons of ethics and conduct, §§533.8–33.30, relating to practice and procedure and §541.1, relating to criminal offense guidelines; Executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; Discussion and possible action to authorize payments from recovery funds; Discussion and possible action to adopt resolution in memory of Ellen L. Acevedo; Discussion and possible action to propose amendment to 22 TAC §535.223, concerning standard inspection report form; Discussion and possible action to approve questions and answers on use of new contract forms; Discussion and possible action on petition for declaratory ruling filed by Texas Utilities Company, Texas Utilities Fuel Company, Southwestern Electric Service Company, Texas Utilities, Inc., Texas Utilities Services, Inc. and Lone Star Gas Company; Discussion and possible action to authorize Wayne Thorburn to approve vouchers under Texas Government Code, §2103.061, to act as a custodian of records and to file complaints under Texas Civil Statutes, Article 6573a, §15B(e); Discussion and possible action to approve: (a) Courses to be offered by: Academy of Real Estate of El Paso, Gulf Coast School of Real Estate, Real Estate Education, Inc.; (b) MCE Providership for ATREES, Ted Whitmer; (c) MCE courses to be offered by: Alamo Real Estate Institute, Alamo Title Company, ATREES, Austin Board of Realtors, Continuing Education Institute, George Leonard School of Real Estate, Nanci Hawes Real Estate School, Ted Whitmer, The Columbia Institute; Consideration of complaint information concerning; Frederica Williams Beckett, Marion Alton Evans, Anita Leach Gray, Douglas Delma Haley, William Henry Harris, Scott Alan Hulshizer, Robert J. McIntosh, Glenda J. Medellin, Leslie Ann Narod, Daniel Neuman, Jimmy Lee Sumbera, Tina Marie Valenciano, Ira Jean Wicker, Chatella Kay Worley, Motion for Rehearing in Hearing No. 97–119–971134; In the Matter of Schmitz Commercial Properties, L.L.C's application for Late Renewal of Mark Edward Moore's Texas Real Estate Salesperson License: Motion for Rehearing in Hearing Nu. 97–111–0951036; In the Matter of Martin Luther Fowler; Entry of orders in contested cases; Scheduling of future meetings;

For ADA assistance, call Nancy Guevremont at (512) 465–3923 at least two days prior to meeting.

Contact: Mark A. Mosely, P.O. Box 12188, Austin, Texas 78711–2188, (512) 465–3900.
Filed: January 22, 1998, 11:45 a.m.

TRD-9801005

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Texas Savings and Loan Department

Wednesday, February 25, 1998, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from First American Bank, Texas SSB, Bryan, Texas to merge with Austin National Bank, Austin, Texas with First American Bank Texas, SSB surviving, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475–1350.
Filed: January 27, 1998, 8:45 a.m.

TRD-9801182

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State Seed and Plant Board

Friday, January 30, 1998, 9:30 a.m.

Texas Department of Agriculture, 1700 North Congress, Room 924A

Austin

Seed Arbitration Board

AGENDA:

The State Seed and Plant Board, acting as the Seed Arbitration Board, will hold a meeting by teleconference call in accordance with the Texas Agricultural Code, § 62.021 and 4 Tex Admin. Code, Chapter 82, to discuss and take action on the requests from Joe M. and Darryl Mahan concerning their sworn complaint for arbitration and the hearing on that date now set for February 12, 1998.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542–3691.
Filed: January 22, 1998, 3:51 p.m.

TRD-9801029

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Thursday, February 12, 1998, 9:00 a.m.

Texas Department of Agriculture Regional Office, 8918 Tesoro Drive, Suite 120

San Antonio

AGENDA:

Discussion and Action On: Minutes of the November 10, 1997 and December 1, 1997 Meetings; Election of Officers; Appointment of Sorghum and Sunflower Advisory Board; Report on Winter Test Growouts; 1998 Approved Inspectors for Certification; Request to discuss Systematic Distribution of Native Species; Applicants for License as Certified Seed Growers; Acknowledgment of Foreign Designations; Acknowledgment of Nomenclature Requests; Variety Name Changes; Requests for Certification Eligibility; Certification Standards, including the addition of woody plant standards; and public comment.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542–3691.
Filed: January 26, 1998, 4:07 p.m.

TRD-9801175

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Thursday, February 12, 1998, 10:00 a.m.

Texas Department of Agriculture Regional Office 8918 Tesoro Drive, Suite 120

San Antonio

Seed Arbitration Board

AGENDA:

The State Seed and Plant Board, acting as the Seed Arbitration Board, will discuss and possibly take action on the following sworn complaint filed for arbitration; Joe M. Mahan and Darryl Mahan, d/b/a Tex-Sandia vs. Petoseed, Inc., ESCO Distributing and Baxter Seed Company.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542–3691.
Filed: January 26, 1998, 4:07 p.m.

TRD-9801174

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Texas Senate

Tuesday, February 10, 1998, 10:00 a.m.

Texas A&M Agricultural Res. and Ext. Center, 10345 Agnes Street, Highway 44

Corpus Christi

Senate Interim Committee on NAFTA

AGENDA:

I. Call to Order

II. Roll Call

III. Approval of Committee Minutes from January 14, 1998 Committee Hearing

IV. Invited Testimony

A. Port of Corpus Christi

B. Port of Houston

C. Port of Brownsville

D. International Longshoreman Association

V. Invited Testimony: NAFTA Transportation Issues

A. IH69

B. Laredo/Corpus Christi Initiative

VI. Local Perspectives on the Impact of NAFTA

A. Key Industries Panel

B. Small Business Panel

VII. Public Testimony

VIII. Adjournment

PURPOSE: The Committee is meeting to take testimony on Committee Charge #3: Assess the impact NAFTA is having on the state's infrastructure, including but not limited to transportation, education, housing, the environment and human services.

Contact: Carla Buckner, P.O. Box 12068, Austin, Texas 78711, (512) 463–0989.
Filed: January 23, 1998, 11:46 a.m.

TRD-9801061

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Wednesday, February 11, 1998, 10:00 a.m.

Senate Chamber, 2E.20, State Capitol, 15th and Congress Avenue

Austin

Senate Interim Committee on Sex Offenders

AGENDA:

I. Call to Order

II. Introductory Remarks by Senator Shapiro

III. Invited Testimony: Ms. Carol Schaper- Alliance for the Mentally Ill of Collin County; Mr. Joe Lovelace — Texas Alliance for the Mentally Ill (TEXAMI); Ms. Linda Marine — Texas Cure; Commissioner Don Gilbert — Texas Department of Mental Health and Mental Retardation; Ms. Marsha McLane — TDCJ, Assistant Director of Parole Division; Ms. Cathy McVey — TDCJ; Assistant Director of Programs and Services; Dr. Jody Johnson — TDCJ, Clinical Director of Sex Offender Treatment; Ms. Mary Beth Powers — Texas Juvenile Probation Commission

IV. Public Testimony

V. Adjournment

Contact: Helen Gonzalez, P.O. Box 12068, Austin, Texas 78711, (512) 463–0108.
Filed: January 22, 1998, 4:11 p.m.

TRD-9801032

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Structural Pest Control Board

Tuesday, February 10, 1998, 9:15 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive

Austin

Public Hearing and Regular Meeting

AGENDA:

I. Approval of Board Minutes of December 9, 1997.

II. Public comment and Public Hearing on §§599.5, 599.6 and 595.16.

III. Consider for Adoption §§599.5 and 599.6.

IV. Committee Report and Possible Proposal of Amendment to §595.15.

V. Consider Proposals for Decisions on Docket Number 472–97–1991 and Docket Number 472–97–1993.

VI. Review Agreed Administrative Penalties and Consent Agreements

VII. Presentation by James H. Cink, Ph.D., Bayer, PREMISE Termiticide.

VIII. Discussion of Borates.

IX. Presentation on Sears Termite and Pest Control settlement.

X. Board Member Notebook- Discussion on Termiticides and Baits by Dr. Gold

XI. Executive Director's Report

XII. Executive Session for Annual Evaluation of Executive Director

XIII. Adjourn.

Contact: Benny Mathis, 1106 Clayton Lane, Suite 100 LW, Austin, Texas 78723, (512) 451–7200.
Filed: January 26, 1998, 8:53 a.m.

TRD-9801115

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Texas State Technical College System

Friday, January 30, 1998, 7:30 a.m.

2424 Boxwood, TSTC Harlingen, Eddie Lucio Health Science Technology Building, Room 108

Harlingen

Board of Regents

AGENDA:

Discussion and Review of the following TSTC Policy Committee Minute Orders and Reports

Committee of the Whole

Policy Committee for Instruction and Student Services

Policy Committee for Human Resources and Development

Policy Committee for Facilities

Policy Committee for Fiscal Affairs

Reconvene Committee of the Whole

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: January 22, 1998, 9:45 a.m.

TRD-9800987

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Friday, January 30, 1998, 1:00 p.m.

2424 Boxwood, TSTC Harlingen, Eddie Lucio Health Science Technology Building, Room 108

Harlingen

Board of Regents

AGENDA:

The board of Regents will meet in regular session to take action on: Classes Meeting with Less than Ten Students; Associate of Applied Science Degree Programs in Distance Learning at Waco and Sweetwater, in Health Information Tech. at Abilene, in Facilities Technician at Breckenridge; Internal Audit Charter; Requests for Budget Change, Signature Authorization; Signature Authorizations for Payee Documents, Amended Tuition and Fees for FY 1998, Policy for Investments, Ground Lease Agreement with Fraser Industries in Amarillo; Ground Lease Agreement with Texas Department of Public Safety at Waco; Vending Machine Contracts at Abilene; Application to the THECB Authorizing Construction of Auto Collision Building at Harlingen; Authorization to Construct a Day Care Center at Harlingen; Acceptance of Bid and Award Contract to Resurface Roadways on the South Side of TSTC Sweetwater.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: January 22, 1998, 9:45 a.m.

TRD-9800988

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Friday, January 30, 1998, 1:10 p.m.

2424 Boxwood, TSTC Harlingen, Eddie Lucio Health Science Technology Building, Room 108

Harlingen

Board of Regents Closed Meeting

AGENDA:

Closed meeting for the specific purpose provided in §§551.071, 551.072, 551.074 and 551.075 of Chapter 551 of the Texas Government Code to include the following:

Judy Taylor vs. TSTC, Civil Action

Possible Sale or Lease of TSTC Rental Property in Amarillo

Discuss Dr. William Segura's Contract Terms

TSTC Development Office and Staffing

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.
Filed: January 22, 1998, 10:23 a.m.

TRD-9800994

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Texas Department of Transportation

Thursday, January 29, 1998, 9:00 a.m.

2705 East Houston Highway

Victoria

Texas Transportation Commission

AGENDA:

Comments from area public officials. Report by Yoakum District. Approve Minutes. Rulemaking: 43 TAC, Chapters 9, 17, 18, 25, 28 and 29. Programs. Contract Awards/Rejections; Defaults/Assignments/Claims. Routine Minutes Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, designation, assignments and duties. General Land Office. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: January 21, 1998, 1:50 p.m.

TRD-9800961

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Thursday, January 29, 1998, 3:00 p.m.

125 East 11th Street, First Floor Conference Room, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

1. Executive session under §551.074, Government Code, to discuss the election of Executive Director of the Texas Department of Transportation.

2. Election of Executive Director of the Texas Department of Transportation.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: January 21, 1998, 1:50 p.m.

TRD-9800962

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Thursday, February 12, 1998, 9:30 a.m.

Holiday Inn Austin Airport, 6911 IH35, Travis Room

Austin

Household Goods Carrier Advisory Committee

AGENDA:

Convene. Review and approval of minutes from November 5, 1997 meeting. Presentations by committee members concerning operation of Type A and Type B Motor Carriers. Discussion of adopted amendments to 43 TAC §§18.1, 18.2, 18.10, 18.11, 18.13–18.16, 18.31, 18.32, 18.51–18.54, 18.61, 18.70–18.72, repeal of §18.12, and new §18.19. Develop action plan for completing responsibilities assigned to committee. Agenda and date of next meeting. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: January 26, 1998, 11:12 a.m.

TRD-9801143

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The University of Houston System

Monday, February 2, 1998, 8:00 a.m.

3100 Cullen Boulevard, UH Athletic/Alumni Facility, Melcher Board Room

Houston

Board of Regents Committee Meetings

AGENDA:

B.S. Degrees in Chemistry/Psychology, Commissioning of Peach Officers, Contracts and Grants, Options for Development of UHS @ Fort Bend; Gift Acceptance Reports, Personnel Actions, Award of Various Contracts, Appointment of Architects, Contract Change Orders, Various Resolutions; Scholar in Residence, Board Policy 48.03, Various System Wide Art Acquisition Actions, and Executive Session/Report from Executive Session.

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Tx 77204–6732.
Filed: January 26, 1998, 1:05 p.m.

TRD-9801150

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The University of Texas at Austin

Monday, January 26, 1998, 9:00 a.m.

21st and San Jacinto Streets, Bellmont Hall, 326

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Approval of Minutes of Previous Meeting

III. New Business

IV. Announcements/Information Reports

V. Executive Session

Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees — §551.074 of the Texas Government Code.

Adjournment

Contact: Jody Conradt, Bellmont Hall 718, Austin, Texas 78712–1286, (512) 499–4402.
Filed: January 22, 1998, 4:29 p.m.

TRD-9801034

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The University of Texas Health Center at Tyler

Thursday, February 5, 1998, Noon.

Highway 271 @ Highway 155, Room 116, Biomed, Research Building

Tyler

Animal Research Committee

AGENDA:

Approval of Minutes

Chairman Report

Veterinarian Report

Old Business

New Business

Adjournment

Contact: Lea Alegre, P.O. Box 2003, Tyler, Texas, 75710, (903) 877–7661.
Filed: January 21, 1998, 2:17 p.m.

TRD-9800967

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Texas On-Site Wastewater Treatment Research Council

Thursday, February 12, 1998, 10:00 a.m.

Harris County Engineering Department /Permit Division, 9900 Northwest Freeway, Suite 103

Houston

Council Meeting

AGENDA:

Newly appointed Council members will be introduced. The Council will act on the minutes of the previous meeting. An election of officers will precede the Chairman's and Executive Secretary reports. A discussion and possible action on FY98 budget issues will follow. The floor will then be open for public comments. Other items on the agenda will include: the status of the Request for Proposals; and the report on the Comparative Study undertaken by Guadalupe Wastewater Companies. The scheduling of future meetings will end the meeting.

Contact: Annette Maddern, TNRCC. MC 178, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–5304.
Filed: January 28, 1998, 11:35 a.m.

TRD-9801259

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Texas Workforce Commission

Tuesday, February 3, 1998, 9:00 a.m.

101 East 15th Street, Room 644, TWC Building

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to H.B. 2777; (2) potential and pending applications for certification of local workforce development boards; (3) recommendations to TCWEC of operational plans of local workforce development boards; (4) approval of local workforce board or private industry council nominees; (5) acceptance of donations of child care matching funds; (6) Discussion, consideration and possible action relating to the procurement or extension of child care management services and child care training contracts; (7) publication in the Texas Register of proposed new Chapter 827 Communities in Schools rules; (8) approving Rule Review Plan as required by House Bill Number 1, Art. IX, §167, General Appropriations Act, 75th Legislative Session; (9) adoption of rule regarding Interagency Matters (Chapter 800 Subchapter D) and adoption of repeal of Chapter 819 (Interagency Matters); (10) adoption of Child Care Rule relating to Parent Fees (40 TAC §809) and related matters; (11) adoption of Child Care rule relating to Parent Responsibilities and Possible Sanctions and related matters; (12) adoption of rule concerning Senate Bill 213 which provides for a pilot project to train Texas Aid to Needy Families (TANF) recipients; (13) development of rule relating to Chapter 809 Child Care for People Diverted from TANF; an advisory committee pursuant to S.B. 1490; and Work and Family Clearinghouse distribution of child care appropriations to school districts pursuant to S.B. 503. Discussion of staff recommendation to expend $5,268 in settlement of the *Guiterrez v. TEC* litigation and on UI benefit payment trends and analysis. Executive Session pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.071(1) concerning the pending or contemplated litigation of the Texas AFL-CIO v. TWC; TSEU/CWA Local 6184, AFL/CIO v. TWC; Guitterez v. TEC; and Gene E. Merchant et al. vs TWC; and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases and on motion for attorneys fees for Appeal Tribunal Number 97 078795 3*1297. Consideration and action on tax liability cases and higher level appeals in unemployment compensation cases on Dockets 4 and 5; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833.
Filed: January 26, 1998, 3:46 p.m.

TRD-9801164

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Texas Council on Workforce and Economic Competitiveness

Friday, February 6, 1998, 9:00 a.m.

101 East 15th Street, Room 501, Texas Workforce Commission Main Building

Austin

Strategic Planning Committee

AGENDA:

9:00 a.m. Call to Order; Announcements; Public Comment; Continuing discussion on revisions to and development of the strategic plan for the workforce development system in Texas; Other Business: Adjourn..

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 936–8103 (or Relay Texas 800–735–2988), at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 936–8103.
Filed: January 28, 1998, 11:57 a.m.

TRD-9801270

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Regional Meetings

Meetings filed January 21, 1998

El Oso Water Supply Corporation, Board of Directors, met at Karnes City High School Cafeteria, Highway 123, Karnes City, January 24, 1998 at 11:00 a.m. Information may be obtained from Charles "Punch" Humphries, P.O. Box 309, Karnes City, Texas 78118, (830) 780–3539. TRD-9800959.

El Oso Water Supply Corporation, Board of Directors, met at Karnes City High School Cafeteria, Highway 123, Karnes City, January 24, 1998 at Noon. Information may be obtained from Charles "Punch" Humphries, P.O. Box 309, Karnes City, Texas 78118, (830) 780–3539. TRD-9800960.

Ellis County Appraisal District, Appraisal Review Board, met at 400 Ferris Avenue, Waxahachie, January 27, 1998, at 8:30 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (972) 937–3552. TRD-9800969.

Golden Crescent Regional Planning Commission, Board of Directors, met at FM 1593, Point Comfort, January 28, 1998 at 4:30 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578–1587. TRD-9800955.

Lubbock Regional MHMR Center, Board of Trustees, met at 1602 10th Street, Board Room, Lubbock, January 26, 1998 at Noon. Information may be obtained from Danette Castle, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0202. TRD-9800983.

Sharon Water Supply Corporation, Board of Directors, met at the Office of Sharon Water Supply, Route 5, Highway 37 South of Winnsboro, January 26, 1998 at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, P.O. Box 50361, Winnsboro, Texas 75494, (903) 342–3525. TRD-9800965.

Upper Leon River Municipal Water District, Board of Directors, met at General Office, located off FM 2861, Lake Proctor Dam, Comanche, January 26, 1998 at 6:30 p.m. Information may be obtained from Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, (254) 879–2258. TRD-9800974.

Upper Rio Grande Workforce Development Board, met with revised agenda at 5919 Brook Hollow, El Paso, January 24, 1998 at 8:30 a.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, (915) 772–5627, ext. 406. TRD-9800979.

Meetings filed January 22, 1998

Andrews Center, Board of Trustees, met at 2323 West Front Street, Room 208, Tyler, January 29, 1998 at 3:00 p.m. Information may

be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535–7338. TRD-9800989.

Andrews Center, Board of Trustees, met with revised agenda, at 2323 West Front Street, Room 208, Tyler, January 29, 1998 at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535–7338. TRD-9801004.

Austin-Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street Board Room, Austin, January 27, 1998 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9801021.

Bexar Appraisal District, Board of Directors, met with revised agenda, at 535 South Main Street, San Antonio, January 26, 1998 at 5:00 p.m. Information may be obtained from Sally Kronenthal, P.O. Box 830248, San Antonio, Texas 78283–0248, (210) 224–8511, TRD-9800997.

Capital Area Rural Transportation System (CARTS), Board of Directors, met at 2010 East Sixth Street, CARTS Conference Room, Austin, January 28, 1998 at 9:00 a.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389–1011. TRD-9800993.

Central Texas Opportunities, Board of Directors, met at 1200 South Frio Street, Coleman, January 27, 1998 at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, (915) 625–4167. TRD-9801016.

Central Texas Water Supply Corporation, Monthly meeting, took place at 4020 Lake Cliff Drive, Harker Heights, January 27, 1998 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9801009.

East Texas Council of Governments, Youth Committee of Workforce Board, met at 1306 Houston Street, Kilgore, January 28, 1998 at 10:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984–8641. TRD-9801012.

Gillespie Central Appraisal District, Board of Directors, met at the Gillespie County Courthouse, County Courtroom, 101 West Main Fredericksburg, January 28, 1998 at 1:00 p.m. Information may be obtained from Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, (830) 997–9807. TRD-9801007

Golden Crescent Regional Planning Commission, Board of Directors, met with revised agenda, at Highway 35 Bypass (Days Inn), Port Lavaca, January 28, 1998 at 4:30 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578–1587. TRD-9801035.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, January 27, 1998 at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582–2309. TRD-9801024.

Houston-Galveston Area Council, Board of Directors, (AERCO) Area Emission Reduction Credit Organization, met at 3555 Timmons Lane, Conference Room B, Houston, January 30, 1998 at 9:30 a.m. Information may be obtained from Mary Gonzalez, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627–3200. TRD-9801026.

Leon County Central Appraisal District, Board of Directors, met at 114 North Commerce, corner Highway 7 and 75 Gresham Building, Centerville, January 26, 1998 at 7:00 p.m. Information may be obtained form Jeff Beshears, P.O. Box 536, Centerville, Texas 75833–0536, (903) 536–2252. TRD-9801025.

Middle Rio Grande Development Council, Executive Committee, met at MRGDC Operations Conference Room, 209 North Getty, Uvalde, January 28, 1998 at 9:00 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 876–3533. TRD-9801031.

Middle Rio Grande Development Council, Texas Review and Comment System Committee, met at 209 North Getty, Uvalde, January 28, 1998 at 3:00 p.m. Information may be obtained from Tim Trevino, P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 278–4151, fax: (830) 278–2929. TRD-9801011.

North Central Texas Council of Governments, Workforce Development Board, met at 616 Six Flags Drive, Arlington, January 27, 1998 at Noon. Information may be obtained from Mary Peters, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 695–9176. TRD-9801006.

Pecan Valley MHMR Region, Board of Trustees, met at 108 Pirate Drive, Granbury, January 28, 1998 at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (254) 965–7806. TRD-9801030.

San Jacinto River Authority, Board of Directors, met at 2301 North Millbend Drive, The Woodlands, January 29, 1998 at 8:00 a.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588–1111. TRD-9801023.

Trinity River Authority of Texas, Central Regional Wastewater System Right-of-Way Committee, met at 5300 South Collins Street, Arlington, January 29, 1998 at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467–4343. TRD-9801001.

Meetings filed January 23, 1998

Alamo Area Council of Governments, Area Judges, 9–1–1 Committee, met at 118 Broadway, Suite 400, San Antonio, January 28, 1998 at 10:45 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78295, (210) 225–5201. TRD-9801058.

Alamo Area Council of Governments, Area Judges, met at 118 Broadway, Suite 400, San Antonio, January 28, 1998 at 11:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78295, (210) 225–5201. TRD-9801059.

Alamo Area Council of Governments, Board of Directors, met at 118 Broadway, suite 400, San Antonio, January 28, 1998 at 1:00 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antoni, Texas 78295, (210) 225–5201. TRD-9801060.

Austin-Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street, Board Room, Austin, January 27, 1998 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9801055.

Bandera County Appraisal District, Board of Directors, met at Bandera County Appraisal District, 1206 Main Street, Bandera, January 29, 1998 at 3:00 p.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (830) 796–3039, fax: (830) 796–3672. TRD-9801052.

Bandera County Appraisal District, Board of Directors, met with revised agenda, at Bandera County Appraisal District, 1206 Main Street, Bandera, January 29, 1998 at 3:00 p.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (830) 796–3039, fax: (830) 796–3672. TRD-9801071.

Central Texas Water Supply Corporation, Monthly meeting with revised agenda, met at 4020 Lake Cliff Drive, Harker Heights, January 27, 1998 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9801073.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, Conference Room "B", First Floor, Dallas, January 23, 1998, at 10:30 a.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801080.

Dallas Area Rapid Transit, Project Management Committee, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, January 27, 1998, at Noon. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801081.

Dallas Area Rapid Transit, Minority Affairs Committee, met at 1401 Pacific Avenue, Conference Room "B", First Floor, Dallas, January 27, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801082.

Dallas Area Rapid Transit, Planning Committee, met at 1401 Pacific Avenue, Conference Room "D", First Floor, Dallas, January 27, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801083.

Dallas Area Rapid Transit, Committee-of-the-Whole, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, January 27, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801084.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, Board Room, First Floor, Dallas, January 27, 1998, at 6:30 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3256. TRD-9801085.

Edwards Aquifer Authority, Legal Committee, met at 1615 North St. Mary's Street, San Antonio, January 26, 1998, at 5900 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212m (210) 222–2204. TRD-9801037.

Edwards Aquifer Authority, Administrative Committee, met at 1615 North St. Mary's Street, San Antonio, January 27, 1998, at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9801038.

Edwards Aquifer Authority, Research and Technology Committee, met at 1615 North St. Mary's Street, San Antonio, January 28, 1998, at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9801039.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Mary's Street, San Antonio, January 28, 1998, at Noon. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9801040.

Edwards Aquifer Authority, Aquifer Management Planning Committee, met at 1615 North St. Mary's Street, San Antonio, January 28, 1998, at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9801041.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, January 28, 1998, at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9801042.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, February 4, 1998 at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893–9673. TRD-9801079.

Johnson County Central Appraisal District, Appraisal Review Board, met at 109 North Main ARB Conference Room, Cleburne, January 28, 1998 at 8:30 a.m. Information may be obtained from Don Gilmore, 109 North Main Street, Cleburne, Texas 76031, (817) 645–3986. TRD-9801075.

Lamar County Appraisal District, Board of Directors, met at 521 Bonham Street, Paris, January 27, 1998 at 4:00 p.m. Information may be obtained from Cathy Jackson, P.O. Box 400, Paris, Texas 75461–400, (903) 785–7822. TRD-9801048.

Lampasas County Appraisal District, Board of Directors, met at 109 East Fifth Street, Lampasas, January 29, 1998 at 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556–8058. TRD-9801095.

Lower Rio Grande Valley Tech Prep Associate Degree Consortium, Board of Directors, met at Best Western Palm Aire Motel, 415 South International Boulevard, Weslaco, January 28, 1998 at Noon. Information may be obtained from Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550–3697, (956) 425–0729. TRD-9801036.

Middle Rio Grande Development Council, Negotiating Committee, met at Holiday Inn, Sage Room, 920 East Main Street, Uvalde, January 28, 1998 at 2:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 876–3533. TRD-9801051

Northeast Texas Rural Rail Transportation District, Board, met at Alliance State Bank, 500 Jefferson Street, Sulphur Springs, January 28, 1998 at 3:00 p.m. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, (903) 450–0140. TRD-9801103.

Permian Basin Regional Planning Commission, Criminal Justice Advisory Committee, met at 2910 La Force Boulevard, Midland, January 29, 1998 at 9:00 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Teas 79711, (915) 563–1061. TRD-9801078.

Rockwall County Central Appraisal District, Appraisal Review Board, met at 106 North San Jacinto, Rockwall, January 27, 1998 at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9801050

Texas Panhandle Mental Health Authority, Board of Trustees, TPMHA, met at 1500 South Taylor Street, Amarillo, January 29, 1998 at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116–3250; (806) 349–5680, fax: (806) 337–1035. TRD-9801077.

Meetings filed January 26, 1998

Austin-Travis County MHMR Center, Board of Trustees, met at 1430 Collier Street, Board Room, Austin, January 29, 1998 at 5:00 p.m.

Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9801155.

Deep East Texas Council of Governments, Economic Development Committee, met at San Augustine Civic and Tourism Center, 611 West Columbia Street, San Augustine, January 29, 1998 at 10:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas, 75951, (409) 384–5704. TRD-9801117.

Deep East Texas Council of Governments, Grants Application Review Committee, met at San Augustine Civic and Tourism Center, 611 West Columbia Street, San Augustine, January 29, 1998 at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas, 75951, (409) 384–5704. TRD-9801118.

Education Service Center, Region 18, Board of Directors, will meet at 2811 LaForce Boulevard, Midland, February 10, 1998 at 6:00 p.m. Information may be obtained from Bryan LaBeff, P.O. Box 60580, Midland, Texas 79711, (915) 563–2380. TRD-9801156.

Ellis County Appraisal District, Board of Directors, met at 400 Ferris Avenue, Waxahachie, January 29, 1998 at 7:00 p.m. Information may be obtained from Kathy A. Rodriguez, P.O. Box 878, Waxahachie, Texas 75168–0878, (972) 937–3552. TRD-9801111.

Heart of Texas Region MHMR Center, Board of Trustees, met at 110 South 12th Street, Waco, January 29, 1998 at 11:45 p.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752–3451, extension 290. TRD-9801114.

Hill Country Community MHMR Center, Board of Trustees, met at 1606 Main Street, Junction, February 3, 1998, at 11:00 a.m. Information may be obtained from Janis Beck, 1901 Dutton Drive, Suite D, San Marcos, Texas 78666, (512) 753–2279. TRD-9801119.

Leon County Central Appraisal District, met at Freestone County Commissioner Courtroom, Second Floor, Freestone County Courthouse, Fairfield, January 29, 1998, at 1:00 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833–0536, (903) 536–2252. TRD-9801144.

Middle Rio Grande Development Council, Workforce Development Board, met at 920 East Main Street, Sage Room, Holiday Inn, Uvalde, January 29, 1998, at 3:30 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 876–1200. TRD-9801113.

Meetings filed January 27, 1998

Education Service Center VI Board, will meet at 1301 Sam Houston Avenue, Huntsville, February 12, 1998 at 4:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295–9161. TRD-9801204.

Lavaca County Central Appraisal District, Board of Directors, will meet at 113 North Main Street, Hallettsville, February 9, 1998 at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798–4396. TRD-9801202.

Middle Rio Grande Development Council, 9–1–1 Regional Advisory Committee, met at MRGDC Operations Office, 209 North Getty, Uvalde, February 4, 1998 at 10:30 a.m. Information may be obtained from William "Bill" Barnes, P.O. Box 1199, Carrizo Springs, Texas 78834, (830) 876–1262. TRD-9801196.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, February 2, 1998, 10:00 a.m. Information may be obtained from W.T. Ballard, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639–7538. TRD-9801195.

Parmer County Appraisal District, Board of Directors, will meet at 305 Third Street, Bovina, February 12, 1998 at 7:00 p.m. Information may be obtained from Ronald E. Proctor, P.O. Box 56, Bovina, Texas 79009, (906) 238–1405. TRD-9801193.

Meetings filed January 28, 1998

Gray County Appraisal District, Board of Directors, met at 815 North Sumner, Pampa, February 4, 1998 at 7:30 a.m. Information may be obtained from Jennifer Read, P.O. Box 836, Pampa, Texas 79066–0836, (806) 665–0791. TRD-9801219.

North Texas Regional Library System, Board of Directors, will meet at 1111 Foch Street, Suite 100, Fort Worth, February 11, 1998 at 1:30 p.m.. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335–6076. TRD-9801237.

Shackelford Water Supply Corporation, Director's Meeting, met at Highway 180 West, Fort Griffin Restaurant, Albany, February 4, 1998 at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (940) 345–6868 or (915) 762–2575. TRD-9801239.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Notice Regarding Private Real Property Rights Preservation Act (SB 14) Guidelines

As part of the Private Real Property Rights Preservation Act enacted in 1995, the Legislature required the Office of the Attorney General to prepare Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the *Texas Register* on January 12, 1996 (21 TexReg 387). The Act also requires the Attorney General to review the Guidelines at least annually and revise them as necessary. That review has been done as required, and to date no revisions have been made to the Guidelines from the version originally published.

To assist this agency in its present review process, a notice was published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 12153), inviting comments or suggestions concerning the Guidelines.

We received no comments in response to this notice. In addition, the current Guidelines remain consistent with the decisions of the United States Supreme Court and the Supreme Court of Texas. Therefore, the Office of the Attorney General believes that no revisions are needed to the Guidelines at this time, and none will be made.

TRD-9801268
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: January 28, 1998

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Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 1997 ("FY97") (based on actual expenditures) and 1999 ("FY99") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY99.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. The total contract award will not exceed $50,000.

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two Indirect Cost Plans in accordance with OMB Circular A-87 one based on FY97 actual expenditures and one based on FY99 budgeted expenditures

* Identify the sources of financial information;

* Inventory all federal and other programs administered by the OAG;

* Classify all OAG divisions;

* Determine administrative divisions;

* Determine allocation bases for allotting services to benefitting divisions;

* Develop allocation data for each allocation base;

* Prepare allocation worksheets based upon actual FY97 expenditures and budgeted FY99 expenditures;

* Summarize costs by benefitting division;

* Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

* Determine indirect cost rates throughout the OAG on an annual basis;

* Prepare and present draft Indirect Cost Plans to the OAG by May 1, 1998;

* Formalize the Actual FY97 and Budgeted FY99 Indirect Cost Plans and present them to HHS by May 15, 1998; and

* Negotiate the Indirect Cost Plans' approval with HHS by August 31, 1998.

2. Develop standardized billing rates for legal services

* Review current criteria used by the OAG for charging various agencies;

* Determine the types of legal services provided to the agencies;

* Compile direct hours for each type of service;

* Determine effort reporting requirements;

* Re-examine billing rate options;

* Determine the actual cost of services;

* Analyze and confirm revenues and cost analyses;

* Prepare and present a draft Legal Services Billing Schedule to the OAG by August 1, 1998; and

* Formalize a Legal Services Billing Schedule by August 31, 1998.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate. QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m.,Central Standard Time, March 9, 1998. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code section 2245.028, the OAG anticipates entering into the resultant contract on or about March 20, 1998.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG."

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three different references meeting the following criteria:

1. 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 Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG 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 will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven 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 years.

7. As part of any proposal 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. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE BY FORMER EMPLOYEES OF A STATE AGENCY

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed

by the OAG or any other state agency(ies) at any time during the two years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals 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 proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, 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 proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG 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 the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about March 23, 1998.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will 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, proposals 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 which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective

consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to: Ms. Julie Geeslin, Budget and Purchasing Division, Office of the Attorney General of Texas, 300 West 15th Street, Third Floor, P.O. 12548 Austin, Texas 78711-2548, (Phone: 512-475-4495).

TRD-9801269
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: January 28, 1998

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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 501. Requests for federal consistency review were received for the following projects(s) during the period of January 14, 1998, through January 27, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Petro-Guard Protection, L.L.C.; Location: State Tracts 111,111A, 112 and the south half of 138, in Matagorda Bay and Saluria Bayou in Calhoun and Matagorda Counties, Texas; Project No.: 98-0014-F1; Description of Proposed Action: The applicant proposes to erect and maintain structures and appurtenances to be used in the drilling of wells for the production of oil, gas and other hydrocarbons. The structures will be constructed from steel or timber and will include derrick platforms, production platforms and protective structures. Also, foundations for the installation of aids to navigation, to construct mooring and markers, to drive test piling, conduct coring operations and to construct pipelines. Shell or washed gravel fill may be placed on drill sites as needed; Type of Application: U.S.C.O.E. permit application #21161 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: Union Pacific Railroad; Location: Coady Yard, on Wade Road, in Baytown, Harris County, Texas; Project No.: 98-0020-F1; Description of Proposed Action: The applicant proposes to place approximately 17,000 cubic yards of granular fill material into 8.8 acres of isolated wetlands to facilitate the expansion of an existing rail yard. The existing rail yard is proposed to be expanded from five to eleven tracks to provide additional handling capacity for the Houston area. The existing wetlands are dominated by Sapium sebiferum. As mitigation for the wetland impacts, the applicant is proposing to preserve and enhance 16.9 acres of wetlands located adjacent to Cedar Bayou; Type of Application: U.S.C.O.E. permit application #21160 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Palmera Properties, Inc.; Location: Neches River, northeast of Spindletop, adjacent to the intersection of State Highway 347 and State Highway 380, Jefferson County, Texas; Project No.: 98-0021-F1; Description of Proposed Action: The applicant proposes to construct a bulk material transfer facility, including ship and barge docks, warehouses, and office buildings, on an industrial site formerly known as the Texas Gulf Sulfur Facility. The applicant proposes to fill 28.87 acres of wetlands on the site, with approximately 65,000 cubic yards of material, to prepare the site for construction. Approximately 18.87 acres of the wetlands to be filled are non-tidal, bottomland hardwoods. The remaining 10 acres of wetlands are tidal, emergent wetlands along the Neches River; Type of Application: U.S.C.O.E. permit application #21133 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: Laguna Madre Water District; Location: Laguna Vista Water Plant on State Highway 100, approximately 1.3 miles west of its intersection with FM 510; Project No.: 98- 0022-F1; Description of Proposed Action: The applicant proposes to fill a 2,225 square-foot area, construct a 3.5-acre sludge lagoon, and excavate a 4.3-acre lake in order to expand the facilities on an existing water treatment plant. All of these activities will take place in a wetland are surrounding the treatment plant. The fill area will be located near a proposed ammonia building to stabilize the area for the buildingþs foundation. Approximately 500 cubic yards of fill material will be used at this site; Type of Application: U.S.C.O.E. permit application #21122 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: Matagorda County - Palacios Seawall Commission; Location: 1500 feet north of Well Point and extending to the first opening into Sartwelle Lakes, in north Matagorda Bay, approximately 4 miles south of Palacios, Matagorda County, Texas; Project No.: 98-0023-F1 Description of Proposed Action: The applicant proposes to construct a rock revetment to prevent erosion of a shell beach and a temporary culvert across a tidal stream to provide access to the site for construction equipment. The culvert will be removed when the project is completed and the area restored to pre-construction contours. The revetment will be 3,240 feet long and will consists of two parts. The south 1,170 feet of revetment will be placed in front of an existing, rapidly deteriorating, timber bulkhead. The north 2,070 feet of revetment will be placed along natural beach. To provide the proper grade for the revetment, approximately 1,150 cubic yards of material will be excavated below the mean high water; Type of Application: U.S.C.O.E. permit application #21139 §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: Aker Gulf Marine; Location: Gulf Intracoastal Waterway, near the Corpus Christi Ship Channel, near the end of FM 1069, approximately 3 miles southeast from Ingleside on the Bay, San Patricio County, Texas; Project No.: 98-0024- F1; Description of Proposed Action: The applicant proposes to combine Permit #12452(07) and #17225(08). Both permits are held by the applicant and both concern dredging and the construction and maintenance of a facility to service barges and offshore commercial vessels, and oilfield development structures. Also requested is authorization to dredge a shallow shelf area to -45 feet mean low tide (MLT) and reduce excavation depths of previously approved adjacent areas from -25 feet MLT to -45 feet MLT. The new excavation will involve 120,000 square feet and generate 173,800 cubic yards of material. All mitigation and conditions of Permit #12452(07) and #17225(08) will remain in full force and effect. Purpose of the work is to give the applicant the ability to safely handle the very large structures that are required in the offshore industry. Type of Application: .S.C.O.E. permit application #21175 §10 of the Rivers and Harbors Act of 1899 (33 .S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are

invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9801261
Garry Mauro
Chairman
Coastal Coordination Council
Filed: January 28, 1998

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Comptroller of Public Accounts

Notices of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the October 24, 1997 issue of the *Texas Register* (22 TexReg 10549).

The consultant will review and evaluate methodologies used in developing the state's property value study, and develop findings and recommendations for improving such methodologies.

The contract is awarded to Analytical Systems, Inc., 20 Colony Park Circle, Post Office Box 3041, Galveston, Texas. The total dollar value of the contract is not to exceed $25,000.00 in the aggregate. The effective date of the contract was January 9, 1998, and it extends through August 31, 1998. The work on the project is scheduled to be completed on or about August 31, 1998.

TRD-9800998
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: January 22, 1998

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In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the December 5, 1997 issue of the *Texas Register* (22 TexReg 12156).

The consultant will assist the Comptroller in conducting a management and performance review of the Wimberley Independent School District, and will produce periodic progress reports and assist in producing a final report. These reports shall include analyses and recommendations to contain costs, improve management strategies, and to promote better education through school administrative efficiency.

The contract is awarded to Empirical Management Services, 8323 Southwest Freeway, Suite 510, Houston, Texas 77074. The total dollar value of the contract is not to exceed $69,965.00 in the aggregate. The effective date of the contract was January 26, 1998, and it extends through August 31, 1998. Empirical Management Services is to assist the Comptroller in preparing a final report which will be made public on or about July 10, 1998.

TRD-9801244
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: January 28, 1998

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 01/26/98 - 02/01/98 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 01/26/98 - 02/01/98 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 02/01/98 - 02/28/98 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 02/01/98 - 02/28/98 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9800958
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 21, 1998

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The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 02/02/98 - 02/08/98 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 02/02/98 - 02/08/98 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 [3] for the period of 02/01/98 - 02/28/98 is 18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 for the period of 02 /01/98 - 02/28/98 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-9801198
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 27, 1998

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Fire Fighters' Pension Commissioner

Request for Proposals for Investment Consulting Services for the Texas Statewide Emergency Services Retirement Fund Administered by the Office of the Fire Fighters' Pension Commissioner

Introduction. The Office of the Fire Fighters' Pension Commissioner (the Office) issues this notice of request for proposals seeking an investment consultant to advise the Board of Trustees and the Commissioner of the Office concerning the investment of the assets of the Texas Statewide Emergency Service Retirement Fund (the Fund). At the end of fiscal year 1997, the Fund had assets with a market value of approximately $25 million.

Services. Services to be provided by an investment consultant include: (1) development of a strategic planning overview for the Fund, including the development of an investment policy statement; (2) performance measurement; (3) investment manager search capabilities; (4) custodial search capabilities and the ability to evaluate outside custodians; and (5) general responsibilities concerning communication, development and review of the Fund's investment policy, development of miscellaneous policies and guidelines and research support.

Copies of the RFP. To receive a copy of the complete RFP, contact Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701. Telephone (512) 936-3473; facsimile no. (512) 936-3480.

Written Questions. Questions concerning the RFP may be submitted in writing, no later than February 18, 1998, to Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701. Telephone (512) 936-3473; facsimile no. (512) 936-3480.

Closing Date for Receipt of Proposals. Fifteen copies of the proposal, including two unbound copies, must be submitted in accordance with Section VIII of the RFP to Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701 no later than 12:00 noon, CST, on February 27, 1998. Proposals received after the deadline will not be considered by the Office and will be returned, unopened, to the proposer.

Evaluation Process. Proposals meeting the minimum qualifications for consideration will be evaluated and independently scored by each member of the Board of Trustees using weighted criteria relating to the competence and qualifications of the proposer. At least three finalists will be selected to make presentations to the Board of Trustees. The presentations will probably be scheduled for the March 19, 1998 Board of Trustees' meeting in Brenham, Texas.

The Office is not obligated to execute a contract as a result of the issuance of this RFP. The RFP does not commit the Office to pay any costs incurred before a contract is executed, nor does it obligate the Office to award a contract or pay any costs incurred in preparing a response to the RFP.

TRD-9801243
Morris E. Sandefer
Commissioner
Fire Fighters' Pension Commissioner
Filed: January 28, 1998

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General Land Office

Notice of Public Hearings

The Texas General Land Office (GLO) will hold public hearings regarding a proposed rule amendment to 31 TAC §19.61 for OSPRA vessels which was published in the January 2, 1998 edition of the *Texas Register*. The proposed amendment applies to all vessels that carry 10,000 gallons or more of oil as fuel or cargo and that operate in coastal waters, and that are not currently required to have an OPA or IMO vessel-specific discharge prevention and response plan.

A schedule of these public hearings is as follows:

(1) 6:00 p.m., Thursday, February 12, 1998, at the University of Texas Brownsville Center at Port Isabel High School, Lecture Hall, Highway 100, Port Isabel, Texas, 78578;

(2) 6:00 p.m., Tuesday, February 17, 1998, at the Port Arthur Civic Center, Meeting Room F, 3401 Cultural Center Drive, Port Arthur, Texas, 77642; and

(3) 6:00 p.m., Wednesday, February 18, 1998, at the University of Houston - Clear Lake, 2700 Bay Area Boulevard, Clear Lake, Texas, 77058.

Persons fluent in Spanish and Vietnamese will be available to assist with questions.

For further information regarding the hearings, please contact Kate McAfee at (512) 463- 8530 or Ronald Bounds at (512) 463-8188.

TRD-9801131
Garry Mauro
Commissioner
General Land Office
Filed: January 26, 1998

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General Services Commission

Notice to Bidders

NTB 96-002-303 REVISED NOTICE TO BIDDERS

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 96-002-303, LAB AND OFFICE BUILDING FOR THE TEXAS DEPARTMENT OF HEALTH, 5000 NORTH SUNSHINE, AUSTIN, TEXAS, AT 2:00 PM, TUESDAY, MARCH 3, 1998.

The approximate total cost for contracts: 96-002B-303: Underslab Electric = $100,000.00; 96-002C-303: Site Utilities = $300,000.00; 96-002D-303: Drilled Piers, Structural Concrete and Steel, Clearing & Earthwork = $4,500,000.00 and 96-002U-303: Underslab Plumbing = $100,000.00.

Bid Receipt Location: General Services Commission/FCSM will receive bids at Texas Department of Health, 1101 W. 49th Street, General Services Building, Conference Room S-207, Austin, Texas 78756. See Invitation and Instructions to Bidders for map.

Contractor Qualifications: Trade contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5:00PM on Tuesday, February 24,1998, to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract

award for the project. A review by FCSM of contractor qualification statements is required prior to obtaining bid documents.

Bid Documents: Plans and specifications will be available not later than Monday, February 2,1998 for trade contractors from the Construction Manager, Gilbane Building Co., 4901 Sunshine, Austin, Texas 78756, telephone: (512) 302-9211, fax: (512) 302-9289, upon delivery of a refundable deposit of $50.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, telephone (512) 463-3417, the Austin, Houston and San Antonio offices of Budd Beets Harden Kolflat and Garza Bomberger and Associates, the Austin office of Gilbane Building Co. and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors in Austin.

Pre-Bid Conference: There will be MANDATORY Pre-Bid Conference on Tuesday, February 24,1998 at 2:00PM, for all projects, at the Texas Department of Health, 1100 W. 49th Street, General Services Building, Room S-207, Austin, Texas 78756. See Invitation and Instructions to Bidders for map.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9801189
Judy Ponder
General Counsel
General Services Commission
Filed: January 27, 1998

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Office of the Governor

Invitation for Proposals for Consulting Services

The Office of the Governor, on behalf of the Texas Strategic Economic Development Planning Commission, is requesting proposals from vendors to provide consulting services to develop a strategic economic development plan and related services.

The vendor shall produce a ten year strategic economic development plan for Texas in accordance with the findings of the Texas Strategic Economic Development Planning Commission (hereinafter, "Strategic Commission") as established by Subchapter C, Chapter 481 of the Texas Government Code. The report shall be completed and delivered to the Office of the Governor prior to October 15, 1998.

The report shall outline the Strategic Commission's long-range plan for economic development in Texas. The report shall include, but is not limited to: (1) identifying components of a long range domestic and international economic development plan; (2) identifying ways to encourage investment in rural Texas; (3) identifying Texas' competitive advantages and disadvantages as a place to do business; (4) recommending changes to improve business climate; (5) evaluating the creation of a permanent economic development information network; (6) evaluating other states' economic development programs for possible adoption in Texas; (7) studying the effects of consolidating programs at the Texas Department of Economic Development; and (8) developing measurable economic development goals for the state.

The requested services will require an understanding of the strategic planning process and economic development trends and issues at the state, national and international levels. The consultant must be experienced with and have knowledge of other successful economic development programs in other states, economic trends, business climate issues, international trade issues, and experience in analyzing and organizing data in a presentable format.

The consultant will be required to work with the Of lice of the Governor, other state agency officials and members of the Strategic Economic Development Planning Commission in formulating conclusions and recommendations.

The Office of the Governor will evaluate the proposals and award the contract to the vendor offering the best value to the State of Texas. Proposals will be evaluated based on factors mentioned above, as well as other factors, including: (1) description of the methodology for producing the report; (2) responsiveness to the Request for Offer; (3) vendor expertise; (4) cost; (5) past products; and (6) references.

The closing date for the receipt of offers for these services is February 27th, 1998, at 5:00 p.m. For a complete Request for Offers packet or further information, please contact Mr. Jim Glotlelty, Governor's Policy Office, State Insurance Building, 4th floor, 1100 San Jacinto, P.O. Box 12428, Austin, Texas 78711, fax (512) 463-1975, phone (512) 463-2198.

TRD-9801180
Pete Wassdorf
General Counsel
Office of the Governor
Filed: January 26, 1998

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
San Antonio	Methodist Health System of San Antonio	L05076	San Antonio	0	01/14/98
Grapevine	Grapevine Internal Medicine Center	L05124	Grapevine	0	01/05/98
Abilene	Texas Cancer Center Abilene	L05127	Abilene	0	01/13/98
Mesquite	Balfour Beatty Construction Inc	L05130	Mesquite	0	01/13/98
Mexia	Mexia Prinipal Healthcare	L05144	Mexia	0	01/14/98

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Texarkana	Red River Pharmacy	L05077	Texarkana	2	01/16/98
Amarillo	Syncor International Corporation	L03398	Amarillo	24	01/06/98
Andrews	Permian General Hospital	L03158	Andrews	12	01/09/98
Austin	Syncor International Corporation	L02117	Austin	61	01/05/98
Austin	Warrington Incorporated	L03074	Austin	22	01/16/98
Baytown	Chevron Chemical Company	L00962	Baytown	28	01/12/98
Beaumont	Syncor International Corporation	L02987	Beaumont	31	01/06/98
Carrollton	Tenet Health Systems Hospitals Dallas Inc	L03765	Carrollton	25	01/05/98
Carrollton	SGS - Thompson Microelectronics	L03930	Carrollton	11	01/12/98
Corpus Christi	Coastal Refining and Marketing Inc	L01268	Corpus Christi	20	01/08/98
Corpus Christi	Syncor International Corporation	L04043	Corpus Christi	20	01/05/98
Dallas	Medical City Hospital Dallas	L01976	Dallas	104	01/05/98
Dallas	Syncor International Corporation	L02048	Dallas	88	01/05/98
Dallas	Physician Reliance Network Inc dba Texas Diagnostic	L03989	Dallas	14	01/09/98
Dallas	Advanced Metabolic Imaging	L04526	Dallas	5	01/07/98
Dallas	Texas Instruments Incorporated	L05048	Dallas	1	01/12/98
El Paso	Syncor International Corporation	L01999	El Paso	86	01/06/98
Fort Worth	Syncor International Corporation	L02905	Fort Worth	46	01/05/98
Fort Worth	Huguley Memorial Medical Center	L02920	Fort Worth	19	01/07/98
Fort Worth	Sterigenics International Inc	L03851	Fort Worth	19	01/08/98
Grapevine	Numed Imaging Centers Incorporated	L05016	Grapevine	3	01/15/98
Houston	MQS Inspection Incorporated	L00087	Houston	71	01/09/98
Houston	Hermann Hospital	L00650	Houston	49	01/09/98
Houston	Richmond Imaging Affiliates Ltd	L04342	Houston	18	01/07/98
Houston	Texas Childrens Hospital	L04612	Houston	20	01/06/98
Houston	William Marsh Rice University	L04744	Houston	4	01/08/98
Lubbock	Texas Tech University	L01869	Lubbock	60	01/09/98
Lubbock	Syncor International Corporation	L02737	Lubbock	42	01/06/98

CONTINUED ADMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
McKinney	Columbia Medical Center of McKinney Subsidiary LP	L00540	McKinney	33	01/05/98
Midland	Diabetes Center of the Southwest	L03238	Midland	12	01/14/98

Mission	Valley Nuclear Incorporated	L04521	Mission	11	01/07/98
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	29	01/07/98
North Richland Hil	HCA Health Services of Texas Inc	L02271	North Richland Hills	28	01/14/98
Pasadena	Pasadena Bayshore Medical Center	L00153	Pasadena	58	01/05/98
Perryton	Midwest Inspection Service	L03120	Perryton	48	01/12/98
Rio Grande City	Starr Regional Imaging Center LLC	L04928	Rio Grande City	2	01/13/98
San Antonio	Trinity University	L01668	San Antonio	25	01/12/98
San Antonio	University of Texas at San Antonio	L01962	San Antonio	34	01/06/98
San Antonio	University of Texas at San Antonio	L01962	San Antonio	35	01/15/98
San Antonio	Syncor International Corporation	L02033	San Antonio	76	01/06/98
San Antonio	Santa Rosa Health Care Corporation	L02237	San Antonio	47	01/08/98
San Antonio	Advanced Medical Imaging	L04305	San Antonio	18	01/14/98
San Antonio	Radiology Associates of San Antonio	L04927	San Antonio	7	01/14/98
San Antonio	US Imaging Inc	L04968	San Antonio	10	01/15/98
Seguin	Guadalupe Valley Hospital	L02292	Seguin	17	01/13/98
Texarkana	Texarkana Memorial Hospital Inc	L02486	Texarkana	26	01/05/98
Throughout Texas	Wedge Dia-Log Inc	L00315	Grand Prairie	81	01/14/98
Throughout Texas	Berry Fabricators	L01575	Corpus Christi	32	01/15/98
Throughout Texas	Syncor International Corporation	L01911	Houston	99	01/05/98
Throughout Texas	Bix Testing Laboratories	L02143	Baytown	82	01/09/98
Throughout Texas	Phillips Petroleum Company	L02480	Borger	30	01/12/98
Throughout Texas	Lower Colorado River Authority	L02738	Austin	24	01/12/98
Throughout Texas	Global X-Ray & Testing Corporation	L03663	Aransas Pass	56	01/09/98
Throughout Texas	Midland Inspection and Engineering	L03724	Odessa	59	01/12/98
Throughout Texas	D-Arrow Inspection Incorporated	L03816	Houston	55	01/12/98
Throughout Texas	Arias & Kezar Incorporated	L04964	San Antonio	6	01/12/98
Victoria	Equistar Chemicals LP	L04101	Victoria	10	01/15/98

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Austin	Austin Cancer Center	L03995	Austin	6	01/06/98
Borger	Agrium US Inc	L02772	Borger	14	01/09/98
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	37	01/08/98
Dallas	Tenet Health System Hospitals Dallas Inc	L02314	Dallas	35	01/15/98
Fort Worth	Trans-America International Inc	L04634	Fort Worth	17	01/08/98
Freeport	BASF Corporation	L01021	Freeport	46	01/15/98
Houston	Northside General Hospital	L02779	Houston	11	01/08/98
Houston	MacGregor Medical Association	L04646	Houston	6	01/08/98
Lubbock	Methodist Hospital	L00483	Lubbock	96	01/08/98
Stephenville	Harris Methodist Erath County	L03097	Stephenville	17	01/07/98
Sweeny	Phillips Petroleum	L00337	Sweeny	37	01/13/98
The Woodlands	Betzdearborn, Inc	L03377	The Woodlands	15	01/09/98
Throughout Texas	Reynolds Metals Company	L00200	Corpus Christi	36	01/13/98
Throughout Texas	ASOMA Instruments Incorporated	L02788	Austin	32	01/09/98

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	L A Fuller & Sons Construction Inc	L04170	Amarillo	3	01/13/98

Tyler	La Gloria Oil and Gas Company	L02289	Tyler	9	01/08/98
Wichita Falls	Wichita General Hospital	L00350	Wichita Falls	60	01/12/98

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Houston	Laboratory Corporation of America	L01933	Houston	14	01/09/98

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9800991
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 22, 1998

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Imaging Dynamics, Inc., Fort Worth, R21860; Robert Maidenberg, M.D., Houston, R21343; Sheri J. Talley, M.D., Fort Stockton, R19734; Northside Family Medical Clinic, Fort Worth, R13460; Lee D. McKellar, M.D., Mount Pleasant, R12085; East Texas Medical Center - Crockett, Crockett, R00807; North Central Expressway Health Care Center, Dallas, R21348; Chiropractic Health and Wellness Center, Houston, R21313; Accident and Sports Injury Clinic, San Antonio, R15259; Rasure Chiropractic Center, Sulphur Springs, R13441; Cheryl Nicoli Contreras, D.D.S., Rockwall, R22671; H. Mark Trammell, D.D.S., Tyler, R18296; R. Philips X-Ray, Arlington, R20191; Semloh Cor-

poration, Truth or Consequences, New Mexico, R06703; Terrell Veterinary Center, Terrell, R19826.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9801232
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 28, 1998

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Aprogenex, Inc., Houston, L04358; Medical Service Laboratories, Houston, G01131.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9801234
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 28, 1998

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Notices of Revocation of Radioactive Material License

The Texas Department of Health (department), having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material license: Capitan Corporation, Odessa, L04211, January 13, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9801235
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 28, 1998

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The Texas Department of Health (department), having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material license: Capitan Corporation, Odessa, L04211, January 13, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9801233
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 28, 1998

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Health and Human Services Commission

Long Term Care Plan for People with Mental Retardation and Related Conditions

In accordance with its responsibilities as defined under the Texas Health and Safety Code, §533.062, the Texas Health and Human Services Commission publishes this "Plan on Long-Term Care for Persons With Mental Retardation

Long Term Care Plan for People With Mental Retardation and Related Conditions

Fiscal Biennium 1989-1999

Services in the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, and the Texas Rehabilitation Commission for People with Mental Retardation or Developmental Disabilities

Fiscal Years 1995-1999-[figure 1]

Fiscal Years 1995-1999

Texas Department of Mental Health and Mental Retardation					
	FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
Campus Based Services - Average Monthly Census					
State Schools	5,676	5,517	5,372	5,213	5,038
State Centers	203	207	207	210	210
TOTAL	**5,879**	**5,724**	**5,579**	**5,423**	**5,248**
Community Based ICF/MR Facilities – Average Number of Persons Served Per Month					
Facility Size					
6 or less	3,989	4,256	4,268	4,268	3,994
7 to 15	889	896	929	929	866
16 or more	2,407	2,318	2,308	2,308	2,260
LOC VIII	104	125	131	131	105
Total	**7,389**	**7,596**	**7,635***	**7,635***	**7,226***
* Figures may not sum due to rounding					
Home and Community-Based Services Waivers - Average Number of Persons Served Per Month					
	2,477	2,532	3,021	4,586	5,017

Department of Human Services Average					
Community Living Assistance and Support Services – Number of Persons Served per Month					
	FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
	665	764	835	1,034	1,052

Texas Rehabilitation Commission Average					
Deaf/Blind with Multiple Disabilities Program – Number of Persons Served Per Month					
	FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
	50	73	100	100	100

Numbers for FY98-99 reflect each agency's H.B.1 appropriations

Long Term Care Bed Plan Service Categories

Intermediate Care Facilities For People With Mental Retardation (ICF/MR and ICF/MR-RC)

These services are provided in a variety of settings: state-operated facilities such as State Schools and State Centers, six-bed-or-less facilities, and larger than six-bed facilities. The non-state operated facilities are owned by private for-profit and private or public not-for-profit entities. The ICF/MR program serves people at four levels of disability: Levels of Care (LOC) I, V, VI, and VIII. Individuals

with mental retardation receive Level I, V, or VI services, depending on the severity of their disability and the extent of their habilitation and medical needs. LOC VIII is reserved for people who do not have a primary diagnosis of mental retardation but are able to benefit from a 24-hour supervised residential setting. The Texas Department of Mental Health and Mental Retardation (TDMHMR) serves as the operating agency for the ICF-MR program.

Home and Community-Based Waiver Services

Section 1915(c) of the Social Security Act allows states to seek "waivers" of federal Medicaid rules in order to provide an array of supportive services in the community as an alternative to institutional care. Home and Community-Based waivers for persons with mental retardation or other developmental disabilities allow people who qualify for ICF/MR the option of living in their own home, a family home, or other small setting. These programs are known as waiver programs because they "waive" some of the rules, which limit service options in an ICF/MR residence. Home and Community-Based Waiver for People with Mental Retardation (HCS)

Home and Community-Based Waiver for People with Mental Retardation (HCS)

The HCS waiver provides an array of community-based services for persons with mental retardation who would otherwise qualify to receive services in an ICF-MR facility. The HCS waiver includes services such as adaptive aids, case management, counseling and therapeutic services, homemaker services, habilitation services, minor home modification services, nursing services, and respite services. TDMHMR serves as the operating agency for this program.

HCS-OBRA Targeted Waiver

The HCS-OBRA Targeted Waiver (HCS-O) is a separate waiver developed and administered by TDMHMR under a special provision of federal Medicaid law as an option to nursing facility care for people with developmental disabilities. TDMHMR serves as the operating agency for this program.

Community Living Assistance and Support Services (CLASS)

The CLASS program offers people of all ages an opportunity to live, work, and socialize in their community by offering attendant services, therapies to help maintain muscle coordination, and an array of adaptive aids and minor home modifications which aid in such activities as meal preparation, shopping in the community and attending college. Because of the CLASS program, many adults have been able to move into their own apartments and become more active citizens within their communities. The Texas Department of Human Services (TDHS) is the operating agency for the CLASS program.

Program for Individuals who are Deaf/Blind with Multiple Disabilities

The Texas Rehabilitation Commission (TRC) administers this community-based program for individuals who are deaf/blind and have multiple disabilities.

Deaf/blind/Multiple Disabled waiver services enable individuals to live as independently as possible. Services include respite care, habilitation, intervenor, chore provider, assisted living, case management specialist consultations, medical equipment, environmental accessibility, and prescription medication.

Additional Information by Service Category

ICF-MR

Campus-Based Services Average Number of Persons Served Per Month-[figure 2]

Campus-Based Services Average Number of Persons Served Per Month

Facility Type	FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
School	5,676	5,517	5,372	5,213	5,038
Center	203	207	207	210	210
Total	**5,879**	**5,724**	**5,579**	**5,423**	**5,248**

The state facility census will continue a net decline of 159 individuals in 1998 and 175 in 1999. Most of the individuals leaving state schools will receive support through the Home and Community-Based Services program. The choice to move from a state school is based on the wishes of individuals living at the state schools, or the wishes of their parents or legal guardians. People seeking community placement and identified as ready for community placement will be moved to the community as soon as possible.

Community-Based ICF/MR Facilities

Average Number of Persons Served Per Month-[figure 3]

Average Number of Persons Served Per Month

Facility Size	FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
6 or less	3,989	4,256	4,268	4,268	3,994
7 to 15	889	896	929	929	866
16 or more	2,407	2,318	2,308	2,308	2,260
LOC VIII	104	125	131	131	105
Total	7,389	7,596*	7,635*	7,635*	7,226*

* Figures may not sum due to rounding.

Consistent with agency policy and national trends, TDMHMR is developing procedures for the downsizing of large ICF/MR facilities which voluntarily seek to reduce the number of certified beds in existing facilities and transfer those beds to facilities with six or fewer beds. These voluntary reductions will be granted based on existing revenues. TDMHMR reimbursement methodology for ICF-MR services was amended in 1997 to more accurately reflect the fair and reasonable costs of providing services to individuals.

Consistent with agency policy and national trends, TDMHMR is developing procedures for the downsizing of large ICF/MR facilities which voluntarily seek to reduce the number of certified beds in existing facilities and transfer those beds to facilities with six or fewer beds. These voluntary reductions will be granted based on existing revenues. TDMHMR reimbursement methodology for ICF-MR services was amended in 1997 to more accurately reflect the fair and reasonable costs of providing services to individuals.

HCS/HCS-O

Average Number of Persons Served Per Month-[figure 4]

Average Number of Persons Served Per Month

FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
2,477	2,532	3,021	4,586	5,017

The above numbers include individuals currently served in HCS / HCS-O and projected increases in service provision.

The numbers include the following individuals currently served in HCS/HCS-O and increases that are intended:

(1) to provide more equitable access across the state;

(2) for individuals targeted to leave state schools;

(3) for individuals leaving state hospital Multiple Disability Units (MI/MR);

(4) for other people with multiple disabilities; and

(5) for persons who are being served in settings, which are being refinanced through Medicaid to capture increased federal funding.

TDMHMR is reviewing the feasibility and impact of combining the HCS-O waiver with the HCS waiver rather than operating the waivers as two separate and distinct entities.

To ensure that services continue to be available for individuals eligible for HCS-O, TDMHMR has submitted a request for HCS-O waiver expansion which raised the maximum allowable number of individuals served from 154 to 204, effective October 1, 1996. The expansion was funded with existing revenues and will allow for the continued movement of individuals from nursing homes into community-based services.

TDMHMR's HCS waiver was amended in 1997 to accommodate changes in the methodology used to formulate reimbursement rates for services. TDMHMR reimbursement methodology for HCS

services was amended in 1997 to more accurately reflect the fair and reasonable costs of providing services to individuals in these programs.

Class

Number of Persons Served Per Month-[figure 5]

Average Number of Persons Served Per Month

FY 95 Expended	FY96 Expended	FY97 Expended	FY98 Budgeted	FY99 Appropriated
665	764	835	1,034	1,052

As of November 1997, CLASS was delivering services to participants in 75 of 254 counties.

As of November 1997, CLASS was delivering services to participants in 75 of 254 counties.

Deaf/Blind with Multiple Disabilities Program

Number of Persons Served Per Month-[figure 6]

Average Number of Persons Served Per Month

FY 95 Expended	FY96 Estimated	FY97 Budgeted	FY98 Budgeted	FY99 Appropriated
50	73	100	100	100

The program has received sufficient funding for the next biennium to support the anticipated number of individuals in the program by the end of FY97 (100).

TRC included funds to serve additional individuals in its request for exceptional funding within its Legislative Appropriations Request.

Conditions; Definitions

Definitions

Mental Retardation

Mental retardation is defined in Title 25 of the Texas Administrative Code (TAC) §406.202 as:

Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

Related Condition

Related condition is defined in Title 25 of TAC §406.202 as:

Individuals who have a severe, chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for mentally retarded persons;

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living.

TRD-9801272
Marina Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: January 28, 1998

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Notice of Public Hearing

The Health and Human Services Commission will conduct a public hearing to receive public comment on proposed new Subchapter

G. Telemedicine Services, new TAC Section Number §355.7001, concerning the reimbursement for telemedicine services for the Medicaid Program. The public hearing will be held on February 19, 1998, in the Health and Human Services Commission Public Hearing Room located in the Brown Heatley Building at 4900 North Lamar Boulevard, Austin, Texas. Parking will be available at the Texas Department of Human Services complex, 701 West 51st Street. Written comments may be submitted to Linda K. Wertz at the Health and Human Services Commission, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, (512) 424-6517. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Colleen Paige of the Health and Human Services Commission at 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, (512) 424-6517.

TRD-9801247
Marina Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: January 28, 1998

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Texas Department of Human Services

Notice of Public Hearing — Community Based Alternatives (CBA) and Community Living Assistance and Support Services (CLASS) Programs

Texas Department of Human Services will conduct a public hearing to receive comments on the department's proposed rules concerning Community Based Alternatives (CBA) and Community Living Assistance and Support Services (CLASS) programs. These rules propose changes to the client eligibility criteria and provider claims payment and fiscal monitoring requirements for the CBA and CLASS programs. These proposed rules are being published in the February 6, 1998, issue of the Texas Register. The public hearing will be held on March 9, 1998, at 10:00 am in the Public Hearing Room, First Floor, East Tower, Room 125, John H. Winters Center, 701 West 51st Street, Austin, Texas.

Contact Person: Please contact Gerardo Cantu, MC W-521, P. O. Box 149030, Austin, Texas 78714-9030, (512) 438-3693.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Don Mann, (512) 438-3642, by March 3, 1998, so that appropriate arrangements can be made.

TRD-9801214
Glenn Scott
General Counsel
Texas Department of Human Services
Filed: January 27, 1998

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of AFFORDABLE DENTAL PLANS, L.L.C. to MNM-1997, INC., a domestic HMO. The home office is located in Houston, Texas.

Application for incorporation in Texas for SURETEC INSURANCE COMPANY, a domestic property and casualty company. The home office is in Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9801207
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 27, 1998

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Name Applications

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of PROVIDIAN PROPERTY AND CASUALTY INSURANCE COMPANY to CENDANT DIRECT AUTO INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Louisville, Kentucky

Application to change the name of PROVIDIAN FIRE INSURANCE COMPANY to CENDANT PROPERTY & CASUALTY INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Louisville, Kentucky

Application for incorporation in Texas for REPUBLIC NATIONAL LIFE INSURANCE COMPANY, a domestic life company. The home office is located in Houston, Texas.

Application for admission in the State of Texas for SECURITY INDUSTRIAL FIRE INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Donaldsonville, Louisiana.

Application for admission in the State of Texas for SECURITY INDUSTRIAL INSURANCE COMPANY, a foreign life company. The home office is located in Donaldsonville, Louisiana. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9801057
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 23, 1998

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Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be risk-assuming carriers under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined

by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Philadelphia Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-9801130
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 26, 1998

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Texas Lottery Commission

Invitation for Bids to Obtain Postscript Output Services

The Texas Lottery Commission is soliciting bids to obtain Postscript Output Services for the Texas Lottery Commission headquarters located in Austin, Texas.

Objectives.

The Texas Lottery requires Postscript Output Services on an as needed basis as indicated in the Invitation for bid.

Schedule.

Event IFB Issued **Date** February 6, 1998.

Bid Due Date - February 24, 1998 (11:00 a.m. CT)

Contract term. Prices quoted must be in effect for the term of this contract which is the date of execution through August 31, 1999. At its sole option, the Texas Lottery Commission may extend this contract for two one-year periods following the primary term (August 31, 1999).

For a copy of the complete Invitation for Bids please contact:

Lou Smyth

Purchaser, Texas Lottery Commission

512-344-5119

TRD-9801062
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 23, 1998

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Texas Department of Mental Health and Mental Retardation

Notice to Bidders

Sealed bids will be received by the Texas Department of Mental Health and Mental Retardation, Maintenance and Construction, at 909 W. 45th St., Bldg. 3, Room 149, Austin, Texas 78756, Telephone: (512) 206-5880 until 2:00 p.m., Thursday, March 5, 1998, for Project No. 97-053-661, LoanSTAR Energy Cost Reduction Measures, El Paso State Center, 6700 Delta Drive, El Paso, Texas 79905.

A mandatory pre-bid conference will be held at 1:30 p.m., Tuesday, February 17, 1998, at the conference room in Building 502, El Paso State Center, 6700 Delta Drive, El Paso, Texas 79905, Telephone: 915/779-0800. Attendance at the pre-bid conference is MANDATORY. A bid will not be accepted from any bidder that has not attended the pre-bid conference.

Plans and specifications will be available January 29, 1998, from RBM Engineering, 150 N. Festival Drive, El Paso, Texas 79912, Telephone: 915/584-9937. A $50.00 deposit is required. Work involves replacing incandescent lamps with compact fluorescent lamps and incandescent exit lamps with "LED", light fixtures with energy efficient fixtures, ballasts with energy efficient ballasts, and some thermostats with programmable thermostats. The estimated project contract amount is $85,000.00.

Bids will be received in accordance with state procedures.

TRD-9801263
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: January 28, 1998

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Request for Offers of Consulting Services

The Texas Department of Mental Health and Mental Retardation (TDMHMR) requests offers of consulting services pursuant to Texas Government Code, Chapter 2254, Subchapter B. TDMHMR requires the services of a qualified consultant who has extensive knowledge of Medicaid and state-funded behavioral health care system designs, statistical modeling, and full and partial risk reimbursement methodologies.

Offerors must demonstrate competence and experience in advising other state mental health and substance abuse agencies on behavioral health managed care cost containment strategies, analyzing managed care markets nationwide, selecting appropriate statistical methodologies to model risk, and designing capitation rates, case rates, and fee-for-service rates in a managed behavioral health care environment. The offeror must also provide statistical modeling software for TDMHMR's use in evaluating reimbursement scenarios.

The selected consultant will assist TDMHMR in determining the appropriate reimbursement structure for compensating behavioral health managed care organizations and other support organizations participating in the Dallas Behavioral Health Medicaid Managed Care Pilot, a managed care behavioral health pilot to be implemented in July 1999.

The consulting services sought by TDMHMR relate to services previously provided by Anthony Broskowski, Ph.D, of 1237 Avondale Lane, West Palm Beach, Florida, 33409. TDMHMR intends to award the contract based on this request for offers of consulting services to Anthony Broskowski, Ph.D., unless a better offer is received.

The closing date for the receipt of offers for these consulting services is 5:00 p.m., March 9, 1998. Consultants intending to submit an offer may obtain further information by contacting Dave Wanser, Ph.D., Director of Behavioral Health Services, TDMHMR, 909 W. 45th St., Austin, Texas, 78751, telephone (512) 206-4533, fax (512) 206-4784.

TRD-9801264
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: January 28, 1998

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Texas Natural Resource Conservation Commission

Consultant Contract

Notice. This is a formal Notice for Proposers of the intention of the Texas Natural Resource Conservation Commission (TNRCC) to contract for employment consulting services.

The work consists of a combination of services, including advising the agency on recruiting, screening, and referring qualified candidates to fill a variety of classified employee positions statewide within the TNRCC.

A more detailed description of the work is provided in the Scope of Work of the Contract Documents.

Proposals will include a statement of qualifications and experience, a proposed fee, and other material. Objective criteria stated in the Request for Proposals (RFP) will be utilized to evaluate and score each proposal. The proposals will be ranked on the basis of the evaluation scores. TNRCC will negotiate contract terms with the highest ranking proposer until agreement or impasse, continuing down the ranking as necessary.

Deadline. Proposals will be received until 3:00 p.m. central standard time on February 17, 1998, at the mail room of the TNRCC, Technical Park Center, 12100 Park 35 Circle, Building A, Room 122, Austin, Texas 78753.

Contract Documents. The Contract Documents will be available beginning February 6, 1998. The Contract Documents are on file for viewing on premises at TNRCC, between 8:00 a.m. and 5:00 p.m., Monday through Friday. Any addenda will be sent to consultants who provide addresses, fax numbers, or e-mail addresses.

A set of the Contract Documents may be viewed or obtained at the following location: Susanne McDaniel, TNRCC Grants and Contracts Administration, 12100 Park 35 Circle, Building A, Austin, Texas 78758, (512) 239-6389 (voice) or (512) 239-6242 (facsimile).

Written paper requests for the Contract Documents may be sent via regular mail or United States Postal Service Express Mail to: Susanne McDaniel, TNRCC Grants and Contracts Administration, MC 220, P.O. Box 13087, Austin, Texas 78711-3087.

Packages will be mailed to the Proposer by regular mail if requested by Proposer in writing either by facsimile transmission or on paper medium delivered in person or by mail or courier. Proposers who wish to have packages sent by express mail should include in their request the account number of their preferred express mail delivery service.

The Contract Documents include, but are not limited to, the Notice of Request for Proposals, Instructions for Proposers, Additional Deliverables and Certifications, Agreement, General Conditions, and Scope of Services. A complete list of Contract Documents is provided in the Agreement.

Qualifications. As part of this Proposal, Proposers must submit a statement demonstrating expertise in providing the types of services described previously. Proposers' qualifications will be a factor in determining the best value.

Selection of Winning Proposal. Pursuant to Texas Government Code, §2254.027, any contract awarded as a result of this solicitation will be awarded based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee. The scoring procedure by which the award will be made is: Competence, Knowledge, and Qualifications-60 points; Proposed Total Fee-40 points.

HUB Participation. It is a TNRCC goal to strive for 33% Historically Underutilized Business (HUB) participation overall in this contract. TNRCC is committed to making a Good Faith Effort to utilize HUBs in services contracts. TNRCC accepts and encourages the creation of contractor teams such as joint ventures, mentor relationships, prime contractors with HUB subcontractors, and HUB primes with or without subcontractors as ways to meet these participation goals.

TRD-9801262
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: January 28, 1998

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Notice of Invitation for Bids

Notice of Invitation for Bids. The Texas Natural Resource Conservation Commission (TNRCC) announces the issuance of an Invitation for Bids for the purpose of implementing the On-site Assistance Program for Public Water Systems in Texas. The purpose of this program is to improve the managerial, financial, and technical capability of public water systems (PWSs) in Texas through evaluation and assistance on-site at the public water system. The contract will include activities to implement four objectives: identification of PWSs most in need of improved capacity; identification of factors that encourage or impair capacity development; use of the TNRCC's authority to assist PWSs in complying with regulations and to encourage partnerships between PWSs to enhance capacity; and measurement of baseline and capacity improvement. The On-site Assistance Program is funded by set-asides from the Drinking Water State Revolving Fund as authorized by the Safe Drinking Water Act. The successful bidder is expected to be available for training and orientation beginning on or around April 1, 1998.

Contact. Parties interested in submitting bids should contact the TNRCC Contract Representative, Melvin G. Wrenn, at (512) 230-6110, or fax a request for the Invitation for Bids (IFB) package to Melvin G. Wrenn at facsimile (512) 239-6972. Telephone inquiries on the contents of the IFB will not be accepted. All written inquiries should be directed to Melvin G. Wrenn, MC 152, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087.

A Pre-bid Conference will be held at TNRCC, 12015 Park 35 Circle, Building F, Room 2210 on February 19, 1998, and will begin at 2:00 p.m. Central Standard Time (CST).

Closing Date. Bids must be received by TNRCC no later than 3:00 p.m. CST on March 6, 1998. Bids received after this date and time will not be considered.

Award Procedure. All bids will be subject to evaluation by a committee based on the evaluation criteria set forth in the IFB. The committee will determine which proposal best meets these criteria and will make a recommendation to the executive director. The TNRCC reserves the right to accept or reject any or all proposals submitted. The TNRCC is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an IFB. Neither this notice nor the IFB commits the TNRCC to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of IFB-February 6, 1998; Pre-bid Conference-February 12, 1998; Bids Due-March 6, 1998; and Contract Execution-March 17, 1998, or as soon thereafter as possible.

TRD-9801271
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: January 28, 1998

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Texas State Board of Plumbing Examiners

Request for Proposal

Request for Proposals Concerning the Production of the 2000-01, 2001-02, 2002-03, 2003-04 Continuing Education Book for the Texas State Board of Plumbing Examiners.

Filing Authority: Pursuant to Authority granted to the Texas State Board of Plumbing Examiners by Texas Revised Civil Statutes Annotated Article 6243-101, Section 12B, the Board is requesting for proposal the production of the 2000-01, 2001-02, 2002-03, and 2003-04 Continuing Education Book.

Eligible Proposers: The Texas State Board of Plumbing Examiners encourages any entity which can satisfy the conditions in the Request for Proposal (RFP) to submit a proposal. Historically underutilized businesses (HUBs) are particularly encouraged to submit proposals. Contractors are encouraged to subcontract with HUBs if any part or all of the work will be subcontracted.

Project Amount: The Texas State Board of Plumbing Examiners will not make any payments to the selected RFP contractor. The funds for this project will be generated by selling the 2000-01, 2001-02, 2002-03, 2003-04 Continuing Education Book to the Continuing Education Providers which are currently the Associated Plumbing Heating Cooling Contractors, Associated Builders & Contractors, Texas Engineering Extension Service and Texas Pipe Trades. These entities are required to teach from and buy this book for instruction purposes from the selected RFP contractor. Historically, 18,000 Continuing Education Books have been sold each year to the Continuing Education Providers. The price for each Continuing Education Book can be no more than $25.00.

Contract Period: The period of the contract will be for four years covering the period 9/1/2000 - 8/31/2004.

Contract Cancellation: The Texas State Board of Plumbing Examiners has the right to cancel any contract in the event that the Texas State Legislature does not continue the agency funding or provide adequate funding in subsequent bienniums.

Selection Criteria: Proposals will be approved based upon the ability of the proposer to carry out all requirements contained in the RFP. The Board of the Texas State Board of Plumbing Examiners will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The Board reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The Texas State Board of Plumbing Examiners is not obligated to execute the resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit the Board to pay any costs incurred in preparing a response nor after the contract is executed.

Requesting the Proposal: A complete copy of the RFP is included in the *Texas Register*.

Further Information: For clarifying information about the RFP, contact Jim Fowler, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, Texas, 78765, (512) 458-2145, extension 225.

Deadline for Receipt of Proposals: Proposals must be received at the Texas State Board of Plumbing Examiners by 5:00 p.m. (central standard time), March 6, 1998, to be considered.

Request for Proposals Concerning the Production of the 2000-01, 2001-02, 2002-03, 2003-04 Continuing Education Book for the Texas State Board of Plumbing Examiners.

Introduction

For each of the items listed below, detail the processes which you will use to complete the task, any equipment and materials necessary to complete the task, the staff and/or subcontractors that will be involved, all previous experience with each task, and the time-frame for completing the task.

All proposals must include the following in their packages: - financial statement - list of Board of Directors including Officers - list of Shareholders/Owners - printer and printing qualifications - errors and omissions insurance and liability policy ($1,000,000) - indemnity clause to Plumbing Board - non-performance agreement - damage recovery agreement - copies of past technical publications

Requirements for Office Procedures

An Austin office and distribution facility with: - staffing - normal office hours

An 1-800 number for customer contact (provide number to be used).

Order taking and processing - electronically receive orders - 24 hour turnaround - terms and conditions of sale

Billing and billing methods

Evaluations

The publisher must be able to provide the following course evaluation information. - Evaluation production (writing, printing, distribution) - Electronic data collection (direct from evaluation into computer) by Scantron evaluation system - Graphed bi-monthly reports of evaluations - Bi-monthly instructor evaluation report (evaluation to be based on 100 percent)

Legal Specifications and Conditions

Licensing of material - Publisher is responsible for having legal authority to reprint all necessary materials. All materials used must be properly licensed. Publisher assumes all liability.

Technical Specifications

The publisher must meet the following technical specifications. - Entire book must be in electronic format - 600 DPI resolution on

entire book - CD-ROM publication - License rights to distribute CD-ROM viewer - Internet ready format

Printing and Production

The publisher must meet the following specifications for printing and production. - 16 page signatures, 36" single color Miehle press - Film quality (from computer straight to film for better resolution) - Colors - Offset - Paper quality (60 lb book) - Cover quality (10 point coated, one-side cover) - Perfect binding (type and glue) - Sequential numbering of books and certificates

Course Material

Main course book - Course material will be determined by the Board and will change for each of the four years.

Correspondence course - Must be prepared for individuals that fail to take the continuing education course during the period it is offered. A separate charge for this material can be made to the continuing education providers.

Additional correspondence course requirements: - Minimum of four (4) different courses - Print minimum of 500 copies for each course - Support material for proctoring by the provider

Instructor Training

Provider must: - Participate in instructor training - Furnish instructors for instructor training as directed by Plumbing Board - Furnish 200 books each year to Texas State Board of Plumbing Examiners at no charge.

Book Provider Participation with Industry Groups for Program Feedback

Provider must present program for feedback to following groups and conferences: - Associated Builders and Contractors - Building Officials Association of Texas - Mechanical Contractors of Texas - Plumbing Heating Cooling Contractors of Texas - Texas Pipe Trades - Justice of the Peace Conference - Texas State Plumbing Inspectors Conference - American Society of Sanitary Engineers - American Society of Plumbing Engineers - American Backflow Preventers Conference - Possibly two others as required by the Board

Provider must attend code meetings and seminars for updates on standards

Legal Notice

The term of contract will be for 4 years. The Plumbing Board reserves the right to accept or reject any proposal for any reason

Payment for Services

The Texas State Board of Plumbing Examiners will not make any payments to the selected RFP contractor. The funds for this project will be generated by selling the 2000-01, 2001-02, 2002-03, and 2003-04 Continuing Education Book to the Continuing Education Providers which are currently the Associated Plumbing Heating Cooling Contractors, Associated Builders & Contractors, Texas Engineering Extension Service and Texas Pipe Trades. These entities are required to teach from and buy this book for instruction purposes from the selected RFP contractor. Historically, 18,000 Continuing Education Books have been sold each year to the Continuing Education Providers. The price for each 2000-01, 2001-02, 2002-03, and 2003-04 Continuing Education Book can be no more than $25.00.

TRD-9800992
Jim Fowler
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Filed: January 22, 1998

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Texas State Board of Pharmacy

Notice of Meeting

The Texas State Board of Pharmacy announces that the Task Force on Pharmacists' Working Conditions and Their Impact on the Public Health will meet on February 4, 1998. The meeting will be held in Tower 2, Room 2-225, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas at 9:30 A.M.

TRD-9800999
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: January 22, 1998

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Texas Department of Public Safety

Public Hearing Notice

The Texas Department of Public Safety, in accordance with Administrative Procedure and Texas Register Act, Texas Government Code, §2001 et seq., and Texas Civil Statutes, Article 6675d, §3, is holding a public hearing on January 30, 1998, at 8:30 a.m. in the Inspection and Planning Conference Room of the Department of Public Safety, 5805 North Lamar Blvd., Austin, Texas.

The purpose of the hearing is to receive comments from all interested persons regarding adoption of amendments to Administrative Rule §3.59 regarding Regulations Governing Transportation of Hazardous Materials and Administrative Rule §3.62 regarding Transportation Safety, proposed for adoption under the authority of Texas Civil Statutes, Article 6675d, §3, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial vehicles. The proposed new rules were published in the December 19, 1997 issue of the *Texas Register* (22 TexReg 12434).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Letters should be addressed to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140.

This hearing will be conducted in accordance with the Texas Department of Public Safety's General Rules of Practice and Procedure, §§29.1 - 29.49.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact Major Lester Mills at (512) 424-2116 three work days prior to the meeting so that appropriate arrangements can be made.

TRD-9800982
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: January 21, 1998

♦ ♦ ♦

Public Utility Commission of Texas

Application In Compliance With Substantive Rule 23.67

Notice is given to the public of the filing with the Public Utility Commission of Texas (the commission) an application on December 30, 1997, by Lamar County Electric Cooperative Association in compliance with Substantive Rule 23.67.

Docket Title and Number: Application of Lamar County Electric Cooperative Association in Compliance with Substantive Rule 23.67. Docket Number 18604.

The Application: In Docket Number 18604, Lamar County Electric Cooperative Association requests that its transmission cost of service be approved and included in the determination of rates and charges for transmission service for 1998. Lamar County Electric Cooperative Association placed transmission facilities in service in 1997 and now is obligated to provide transmission service under Substantive Rule 23.67. Lamar County Electric Cooperative Association's proposed annual transmission cost of service is $81,476.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801170
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

♦ ♦ ♦

Application To Revise Tariff To Clarify The Applicability of Load Management Interruption Credit

Notice is given to the public of the filing with the Public Utility Commission of Texas (the commission) an application on October 21, 1997, by Lamb County Electric Cooperative, Inc. to revise its tariff, clarifying the applicability of load management interruption credit.

Docket Title and Number: Application of Lamb County Electric Cooperative, Inc. to Revise Tariff, to Clarify the Applicability of Load Management Interruption Credit. Docket Number 18136.

The Application: In Docket Number 18136, Lamb County Electric Cooperative, Inc. requests that the Load Management Interruption Credit tariff be revised to clarify the applicability to loads other than irrigation loads.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801171
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 26, 1998, NHS Communications Group, Inc., doing business as NHS Network Services, L.L.C. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60102. Applicant intends to change its name only to NHS Communications Group, Inc., doing business as ATS.

The Application: Application of NHS Network Services, L.L.C. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18730.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than February 11, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18730.

TRD-9801212
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 1998

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Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 23, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Texas Network Communications, Inc., doing business as TxNet for a Service Provider Certificate of Operating Authority, Docket Number 18720 before the Public Utility Commission of Texas.

Applicant intends to provide enhanced telecommunications services utilizing advanced telecommunications services utilizing advanced telecommunications switching platforms. Applicant intends to provide local dialtone, enhanced calling features, enhanced services, intraLATA, intrastate, interLATA, interstate and international long distance service. Enhanced features include call waiting, conference calling, speed dial, various C.L.A.S.S. features, and voice mail.

Applicant's requested SPCOA geographic area includes the geographic regions currently served by the following incumbent local exchange companies: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., Sugar Land Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and any other incumbent local exchange company or certified telecommunications provider with over 31,000 access lines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 1998.

Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801211
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 23, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of NorthPoint Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 18718 before the Public Utility Commission of Texas.

Applicant intends to offer local exchange services to business and residential customers located in the state of Texas. Exchange services may include, but will not necessarily be limited to local exchange access services to single-line and multi-line customers, local exchange services to customers of Applicant's end user access line services, and dedicated and special carrier access services to other common carriers.

Applicant's requested SPCOA geographic area includes all exchanges in Texas, except those currently served by local exchange companies serving fewer than 31,000 access lines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801169
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 23, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Eclipse Communications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 18601 before the Public Utility Commission of Texas.

Applicant intends to offer switched and special access local services and intraLATA toll and interLATA intrastate telecommunications services through the use of its own facilities and the resold services of other certificated telecommunications carriers. The Applicants intends to offer the following categories of interexchange services: MTS, toll free 800/888, calling card, debit card and operator-assisted services.

Applicant's requested SPCOA geographic area includes all exchanges within the state of Texas currently served by Southwestern Bell Telephone Company and GTE Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801168
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

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Notice of Changes to Earnings Report Forms

The Public Utility Commission of Texas (commission) proposes to change the forms for the Earnings Report for the electric investor-owned utilities, the telephone utilities, and the electric cooperatives and river authorities for the reporting period ending December 31, 1997. A list detailing the significant changes for each report are included in this notice. The commission published a set of general questions on November 21, 1997, in the Miscellaneous Section of the *Texas Register* asking for changes parties would like made to the Earnings Report forms. In response to these questions, nine parties filed substantive comments. These comments were considered by the commission in determining the proposed changes. Comments (16 copies) to the proposed changes should be filed with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Ave., Austin, Texas 78711-3326, by February 16, 1998, under Project Number 18277.

Proposed Revisions to the Earnings Report for Electric Investor-Owned Utilities

1. Add schedules to report the amount and weighted-average cost of Preferred Trust Securities.

2. Add line to *Schedule VI, Weighted Average Cost of Capital* to include amount and cost of Preferred Trust Securities.

3. Include tax-deductible distributions related to Preferred Trust Securities in calculation of line 163 of *Schedule IV, Federal Income Taxes.*

4. Change the following financial ratios: (a) Total Debt as Percent of Total Capital; (b) Pre-Tax Interest Coverage Ratios; (c) Fixed Charge Coverage Ratio (excluding AFUDC and Deferrals; (d) Cash Interest Coverage; (e) Internal Cash as Percentage of Construction Expenditures; and (f) Cash Coverage of Common Dividends; to reflect distributions related to Preferred Trust Securities, where appropriate, and to achieve consistency with Standard & Poor's definitions of these ratios.

5. Add the ratio Funds From Operations/Average Total Debt.

6. Add to *Schedule III, Invested Capital at End of Reporting Period* an additional line that automatically calculates an earned return on equity.

7. Modify format and instructions for *Supplemental Schedule V, Special Rates.*

8. *Schedule IVa, page 2, Consolidated Tax Savings,* has been unprotected to allow the answers to be inputted on the page.

9. Drop subparts (f) and (g) on General Question 10, related to OPEB expenses.

Proposed Revisions to the Earnings Report For Telephone Utilities

1. Add line to *Schedule XIV, Historical Financial Statistics* to allow for the optional reporting of an adjusted return on equity that reflects the recapitalization of write-offs related to FAS 71 and FAS 106 and other specified adjustments.

2. Change instructions for line 31 of *Schedule XIV, Historical Financial Statistics* to include current maturities in the reported amount of long-term debt.

3. Add to *Schedule II, Invested Capital* an additional line that automatically calculates an earned return on equity.

4. Move Internal Cash as a Percent of Construction Expenditures ratio from *Schedule XIII, Historical Financial Ratios (Large Telephone Companies) to Schedule XIV, Historical Financial Ratios (Total Company Basis).*

5. Change the following financial ratios: (a) Pre-Tax Interest Coverage Ratios; (b) Internal Cash as a Percentage of Construction Expenditures; (c) Internal Cash as a Percent of Average Long-Term Debt; primarily to achieve consistency with Standard & Poor's definitions of these ratios.

6. Add the ratio Funds From Operations/Interest Coverage.

7. Change instructions on *Schedule Ia, column 2*, to clarify that regulatory amortization of FAS 106 transition obligation shall be amortized consistent with Subst. Rule 23.21(c)(F) and amortization of FAS 71 assets shall be shown as an adjustment to book amounts, if these items have been written off on financial books. Also modify instructions to *Schedule IX* to clarify that the equity balance shall be consistent with regulatory amortization of FAS 106 transition obligation and FAS 71 assets.

8. *Schedule I, Summary of Revenues and Expenses,* add two additional revenue lines: Sale of Unbundled Network Elements Revenue, and Pure Resale Revenue.

9. *Schedule XIV, Historical Financial Statistics,* separate total plant additions into two lines, "Plant additions related to Infrastructure Commitments" from election of Section 58 or 59 of PURA, and "Other plant additions".

10. *Schedule II, Invested Capital,* lines 43 and 44 have been combined consistent with FCC Part 32.

11. Drop subparts (f) and (g) on General Question 20, related to OPEB expenses.

12. *Schedule IX, Weighted Average Cost of Capital,* revise footnote that debt balance should also be consistent with amounts shown in Schedules XIII, and XIV, and that any inconsistencies should be footnoted in Supplemental Schedule V.

Proposed Revisions to the Earnings Reports for Electric Cooperatives/ River Authorities

1. Change instructions for line 32 of *Schedule V, Historical Financial Statistics* to include current maturities in the reported amount of long-term debt.

2. Drop subparts (f) and (g) on General Question 9, related to OPEB expenses.

3. Modify format and instructions for *Supplemental Schedule V, Special Rates.*

A more detailed description of the proposed changes, including the reasons for proposing them, may be obtained in Central Records under Project 18277. A copy of the revised Earnings Report Forms shall also be made available in Central Records after February 6, 1998. Questions regarding the proposed changes may be directed to Martha Hinkle at (512) 936-7435 or Darryl Tietjen at (512) 936-7436.

TRD-9801209
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 1998

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Notice of Intent To File Pursuant To Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for a new PLEXAR- Custom service for LeTourneau, Inc. in Longview, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a New PLEXAR-Custom Service for LeTourneau, Inc. in Longview, Texas pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 18712.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for LeTourneau, Inc. in Longview, Texas. The designated exchange for this service is the Longview exchange, and the geographic market for this specific PLEXAR-Custom service is the Longview LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801167
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

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Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after January 30, 1998, an application for approval of promotional rates, pursuant to Public Utility Commission Substantive Rule 23.28.

Tariff Title and Number: Application of Central Telephone Company of Texas doing business as Sprint for Approval of Promotional Rate Offering Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 18707.

The Application: Central Telephone Company of Texas doing business as Sprint (Sprint) seeks approval to offer In Touch With Call Forwarding Network Services Package to customers for 30 days at no charge. Sprint proposes to introduce this promotional rate for a period of 55 days, beginning on March 23, 1998 and ending May 17, 1998.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 18707.

TRD-9801166
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after January 30, 1998, an application for approval of promotional rates, pursuant to Public Utility Commission Substantive Rule 23.28.

Tariff Title and Number: Application of United Telephone Company of Texas, Inc. doing business as Sprint for Approval of Promotional Rate Offering Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 18706.

The Application: United Telephone Company of Texas, Inc. doing business as Sprint (Sprint) seeks approval to offer In Touch With Call Forwarding Network Services Package to customers for 30 days at no charge. Sprint proposes to introduce this promotional rate for a period of 55 days, beginning on March 23, 1998 and ending May 17, 1998.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 18706.

TRD-9801165
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 1998

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Notice of Workshop Relating to Entry of Incumbent Local Exchange Carriers into InterLATA Markets

The Public Utility Commission of Texas (PUC or commission) plans to hold a staff-level workshop on February 23, 1998, to review the commission's substantive rules in light of the entry of incumbent local exchange carriers (ILECs) into interLATA markets and discuss any amendments to the rules that may be appropriate. Project Number 17902, *Investigation of Possible Amendments to PUC Substantive Rules due to ILEC Entry into InterLATA Long-Distance Market* has been assigned to this proceeding. Such discussion shall concern at least two types of amendments. The first type is related to possible amendments to language in the rules that refers to interexchange carriers (IXCs) and other long-distance carriers in order to clarify that the language also applies to ILECs providing interLATA long distance service. The second type of amendment to be discussed will concern any substantive or policy changes (including those related to enforcement standards for interconnection agreements) that need to be made to the rules to apply to a new competitive environment where ILECs are providing interLATA long distance service. The workshop will be held from 9:00 a.m. to 5:00 p.m. (with a one-hour lunch break, if necessary) in the commission's training room on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties may, if they desire, bring any proposed amendment language to the workshop.

Persons who plan to attend the workshop should register with Sandra Hamlett at (512) 936-7239. If there are any questions, contact Nelson Parish at (512) 936-7257.

TRD-9801208
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 1998

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Public Notices of Interconnection Agreement

On March 18, 1998 Waller Creek Communications, Inc. (WCC), is scheduled to file its interconnection agreement with Southwestern Bell Telephone Company (SWBT) under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code)(FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §§11.001-63.063 (PURA). The interconnection agreement is to be filed pursuant to the arbitration award in Petition by Waller Creek Communications, Inc. for Arbitration with Southwestern Bell Telephone Company. The petition for arbitration has been designated Docket Number 17922. The petition for arbitration and the underlying interconnection agreement will be available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement that is a result of arbitration. Pursuant to FTA §252(e)(2) the commission may reject any agreement resulting from an arbitration award if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the commission pursuant to FTA §251, or the standards set forth in FTA §252(d). Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 30 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 17922. 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 March 26, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17922.

TRD-9801210
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 1998

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On January 20, 1998, CS Wireless Systems, Inc., doing business as The Beam and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18711. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18711. 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 February 26, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18711.

TRD-9801028
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 1998

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On January 20, 1998, Southwestern Bell Telephone Company and Now Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18708. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18708. 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 February 26, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18708.

TRD-9801027
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 1998

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Texas Department of Transportation

Notice of Invitation

Notice of Invitation: The Odessa District of the Texas Department of Transportation (TxDOT) intends to enter into a contract with a professional engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. A Prime Provider and any Subproviders proposed on the Team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees, needs to be aware of the revolving door laws, including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team must demonstrate that they have a professional engineer, architect, landscape architect, or surveyor registered in Texas who will sign and/or seal the work to be performed on the contract.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation for the work to be performed under this contract is 10% of the contract amount.

Contract Number: 06-845P5006 - The precertified work categories and percentage of the work per category are: 2.14.1 - Environmental Document Preparation (10%); 3.1.1 - Route Studies and Schematic Design (Minor Roadways) (20%); 3.2.1 - Route Studies and Schematic Design (Major Roadways) (25%); 7.1.1 - Traffic Engineering Studies (5%); 9.1.1 - Bicycle and Pedestrian Facility Development (5%); 10.1.1 - Hydrologic Studies (10%); 15.1.1 - Right of Way Survey (10%); 15.1.4 - Right-of-way Maps (5%); 15.3.1 - Aerial Mapping (5%); and/or 15.4.1 - Horizontal and Vertical Control for Aerial Mapping (5%). The work to be performed will be developed on a work order basis for simple added capacity or new location projects. These projects will have little significant natural or human environmental impact; nor will they involve extensive route or alignment studies. The provider will assist the Department with any or all of the following planning activities: preparing Programming Feasibility Study documents; developing supporting environmental documents [either Categorical Exclusion (CE) or Environmental Assessments (EA)]; assisting with the development of exhibits for public involvement proceedings; developing design schematics; developing right-of-way maps, parcel fieldnotes and individual parcel plats; and/or utility location discovery.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

Past Performance Scores: Minimum Qualifications - The Team must provide two separate satisfactory written references for preparing planning documents; to include preparing EA documents and design schematics for rural new location type projects. Preferred Qualifications - The Team must provide four satisfactory written references of which at least two are for preparing planning documents outlined in the minimum requirements of this category; and at least one must be for developing support documents and design schematics for a Widening and Added Capacity type project in an urban residential setting.

Project Requirements:

Environmental Document Preparation (2.14.1): Minimum Requirements - A Team member with a Bachelor's Degree or equivalent experience in environmental studies, urban planning, civil or environmental engineering, or a related field; who has been in responsible charge of the preparation of environmental documents for a minimum of two transportation projects through the issuance of the FONSI; has experience with participation in the preparation of, and management of, environmental documents for a minimal of one Environmental Impact Statement (EIS) through the Record of Decision; and with knowledge of pertinent federal, state and local environmental regulations. Preferred Requirements - In addition to the above minimum requirements, the Team member must satisfactorily demonstrate his/her knowledge of environmental concerns in both an urban residential setting, and in the Southwestern United States (semi-arid to arid) natural environment.

Route Studies and Schematic Design (Minor Roadways) (3.1.1): Minimum Requirements - The team must include a minimum of one professional engineer with three years experience in design of minor roadways and capacity and level of service analysis. Preferred Requirements - In addition to the minimum requirements, the nominated engineer must satisfactorily explain or demonstrate his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" in an undeveloped area.

Route Studies and Schematic Design (Major Roadways) (3.2.1):Minimum Requirements - The team must include a minimum of one professional engineer with three years of roadway design experience on two separate projects. Preferred Requirements - In addition to the minimum requirements, the nominated engineer must satisfactorily explain or demonstrate his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" for a project through a developed residential area.

Traffic Engineering Studies (7.1.1): Minimum Requirements - The team must include a minimum of one professional engineer with demonstrated experience performing traffic engineering studies. Preferred Requirements - In addition to the minimum requirements, the nominated engineer must satisfactorily explain or demonstrate his/her understanding of capacity and level of service analysis, and signing and pavement marking.

Bicycle and Pedestrian Facility Development (9.1.1): Minimum Requirements - The team must include a minimum of one professional engineer with one year experience in the design of bicycle and pedestrian facilities and with knowledge of drainage design and sufficient production staff to perform these activities. Preferred Requirements - In addition to the minimum requirements, the individual must satisfactorily explain or demonstrate his/her experience developing projects where the bicycle facility is a component of the motor vehicle facility using AASHTO's "Development Guidelines for Bicycle and Pedestrian Facilities".

Hydrologic Studies (10.1.1): Minimum Requirements: The team must include one professional engineer with four years experience preparing hydrologic studies; and a minimum of two years as a professional engineer in analysis of complex watersheds. Preferred Requirements: In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience developing hydrologic data for both urban and rural arid to semi-arid watersheds. The rural watersheds are characterized by multiple subareas delineated by county road systems and/or irrigation systems that function as flow collectors and flow direction barriers.

Right of Way Survey (15.1.1): Minimum Requirements - The team must include a minimum of one Registered Professional Land Surveyor (RPLS), with two technical personnel, all with demonstrated experience in the researching and determination of property boundaries. Preferred Requirements - In addition to the above minimum requirements, the nominated surveyor must explain and adequately demonstrate his/her experience determining existing boundary surveys and validating proposed right-of-way maps.

Right-of-way Maps (15.1.4): Minimum Requirements - The team must include a minimum of one Registered Professional Land Surveyor (RPLS) with two technical personnel all with demonstrated experience in the researching and determination of property boundaries. Preferred Requirements - In addition to the above minimum requirements, the nominated surveyor must satisfactorily explain or demonstrate his/her understanding of right-of-way map development, fieldnote composition, and individual parcel plat development.

Aerial Maps (15.3.1.): Minimum Requirements - The team must employ sufficient lead technical personnel with a minimum of five years of experience each in aerial mapping; have available the proper equipment meeting national mapping standards and other equipment required to perform the work; and employ sufficient technical production staff to perform this type of work. Preferred Requirements - In addition to the above minimum requirements, the nominated surveyor must satisfactorily explain or demonstrate his/her understanding of developing topographic and hydrographic survey data from the completed aerial maps for roadway design.

Horizontal and Vertical Control for Aerial Mapping (15.4.1): Minimum Requirements - The team must employ a minimum of one Registered Professional Land Surveyor (RPLS), have available the proper equipment to perform the work, and employ sufficient staff to undertake the requirements normally associated with this type of work. Preferred Requirements - In addition to the above minimum requirements, the nominated surveyor must satisfactory explain or demonstrate his/her understanding of establishing and paneling 2nd Order Horizontal & Vertical Traverses with associated wing points.

Special Project Related Experience:

Environmental Document Preparation (2.14.1): "Special Project Related Experience" in the category is not applicable for this contract.

Route Studies and Schematic Design (Minor Roadways) (3.1.1): Minimum Requirements - The Project Manager must satisfactorily explain and demonstrate his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" for developing schematic design for new and undeveloped locations. Preferred Requirements - In addition to the above Special Project Related Minimum Experience, the Project Manager must explain his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" in an urban residential area; as well as developing schematic design that incorporate bicycle and pedestrian facilities into the motor vehicle facility.

Route Studies and Schematic Design (Major Roadways) (3.2.1): Minimum Requirements - The Project Manager must satisfactorily explain and demonstrate his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" for developing schematic design for developed locations. Preferred Requirements - In addition to the above Special Project Related Minimum Experience, the Project Manager must explain his/her understanding of critical design elements using AASHTO's "A Policy on Geometric Design of Highway and Streets" in an urban developed area; as well as developing schematic design that incorporate bicycle and pedestrian facilities into the motor vehicle facility.

Traffic Engineering Studies (7.1.1): "Special Project Related Experience" in the category is not applicable for this contract.

Bicycle and Pedestrian Facility Development (9.1.1): "Special Project Related Experience" in the category is not applicable for this contract.

Hydrologic Studies (10.1.1): Minimum Requirements - The nominated team member to perform the hydrologic study work task must provide satisfactory explanation of his/her experience developing hydrologic data in an urban environment that is controlled by city/county code and hydraulic codes or plans.

Preferred Requirements - The Project Manager must possess and provide satisfactory explanation of his/her experience developing hydrologic data in an urban environment that is controlled by city/county code and hydraulic codes or plans.

Right of Way Survey (15.1.1): "Special Project Related Experience" in the category is not applicable for this contract.

Right-of-way Maps (15.1.4): "Special Project Related Experience" in the category is not applicable for this contract.

Aerial Maps (15.3.1.): "Special Project Related Experience" in the category is not applicable for this contract.

Horizontal and Vertical Control for Aerial Mapping (15.4.1): "Special Project Related Experience" in the category is not applicable for this contract.

Evidence of Compliance with Assigned DBE/HUB Goal: A provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 498-4739, or by hand delivery to TxDOT, Odessa District, 3901 East Highway 80, Odessa, Texas 79761-0501. Letters of interest will be received until 5:00 p.m. on Friday, February 27, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to five 8 1/2 x 11 pages, 12 pitch font size, single sided with no attachments or appendices, plus references, and must include the contract number 06-845P5006; an organizational chart containing the names, address, telephone and fax numbers of the prime provider and any subprovider(s) proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Gary J. Law, P.E. at (915) 498-4712 or fax (915) 498-4739.

TRD-9801241
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: January 28, 1998

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Public Notice

Pursuant to Title 43, Texas Administrative Code, §31.36 and FTA Circular 9040.1 D, the Texas Department of Transportation will conduct a public hearing to obtain comments to assist the Texas Transportation Commission in assessing whether the current intercity bus needs of Texas are adequately met relative to the other rural public transportation needs in the state.

The Intermodal Surface Transportation Efficiency Act, §5311(f) requires each state to spend 15% of its annual §5311, rural public transportation, apportionment to carry out a program to develop and support intercity bus transportation unless the governor certifies that the intercity bus service needs of the state are adequately met. The Governor of Texas has delegated certification authority to the Texas Transportation Commission.

Comments received will be considered in determining the needs of the intercity bus industry relative to the state's overall rural public transportation needs. If it is determined that the state's intercity bus needs are being adequately met, the Texas Department of Transportation will seek the certification necessary to allocate intercity bus program funds to existing rural public transportation providers.

The public hearing will be held at 10:00 a.m. on February 17, 1998, in the first floor hearing room of the Dewitt C. Greer Building, located at 125 East 11th Street, Austin, Texas. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted at the hearing or may be mailed to: Texas Department of Transportation, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. To be considered, written comments must be received by 5:00 p.m. on February 20, 1998.

For additional information please contact Jim Randall, Acting Director, Public Transportation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-2810.

TRD-9801242
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: January 28, 1998

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Stephen F. Austin University

Notice of Consultant Contract Award-Admissions Standards Study

Pursuant to Texas Government Code, Chapter 2254, Stephen F. Austin State University provides the following information for publication in the Texas Register:

1. The admissions-standards study contract was awarded to the NCHEMS Management Services, Inc., (NMSI), pursuant to Texas Government Code, Chapter 2254.

2. Notice of the request for proposals was published in the September 12, 1997 edition of the Texas Register (Vol. 22 No. 67 P. 9357).

3. The private consultant will study the potential enrollment effects regulating from increased academic admission requirements for first-semester freshman at Stephen F. Austin State University (SFASU).

4. The total value of the contract is $32,550. The contract dated January 20, 1998 will terminate May 31, 1998.

5. The private consultant is NMSI, P.O. Box 9752, Boulder, Colorado 80301–9752.

6. The consultant will study SFASU data to develop applicable student profiles and project enrollment effects resulting from increase academic admissions standards for first semester SFASU freshman.

TRD-9801216
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: January 27, 1998

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Notice of Consultant Contract Award - University Housing Study

Pursuant to Texas Government Code, Chapter 2254, Stephen F. Austin State University provides the following information for publication in the Texas Register:

1. The university housing study contract was awarded to Biddison Hier, Ltd., pursuant to Texas Government Code, Chapter 2254.

2. Notice of the request for proposals was published in the September 12, 1997 edition of the Texas Register (Vol. 22, No. 67, P 9357).

3. The private consultant will review Stephen F. Austin State University housing data and develop recommendations regarding future housing, financing, and co-curricular offerings.

4. The total value of the contract is $79,000 for profession services and a maximum of $11,850 for reimbursable expenses. The contract dated January 20, 1998 will terminate July 31, 1998.

5. The private consultant is Biddison Hier, Ltd., 4315 15th St., NW, Washington, D. C. 20011.

6. The consultant will review all available facilities data on University student housing, conduct an on-site walk-through of each residential facility, meet with University housing staff to obtain other supplementary information, summarize building renovation needs and cost-efficient funding mechanisms, identify the needs of current and potential on-campus housing constituents, create a comprehensive financial model to test fiscal implications and funding strategies associated with proposed renovation and/or new construction options identified, and assess the adequacy of co-curricular programming provided for residential students.

TRD-9801217
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: January 27, 1998

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