This month's front cover artwork:

Artist: *Mike Myers*

12th Grade

Rockwall High School

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

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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

For more information about the student art project, please call (800) 226-7199.

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IN ADDITION

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments Made February 12, 1999

To be members of the Texas Board of Pardons and Paroles for terms to expire February 1, 2005: Paddy Lann Burwell, Route 1 Box 75, P.O. Box 9, Westhoff, Texas 77994, who is replacing Bennie Elmore of Huntsville, Texas whose term expired; Lafayette Collins, 1800 Springswater Drive, Round Rock, Texas 78681, who is replacing John Escobedo of Huntsville whose term expired; Linda Garcia, 9999 Spencer Highway, #412, La Porte, Texas 77571, who is replacing Mary Leal of Angleton whose term expired; James Paul Kiel Jr., 618 Oxford Drive, Tyler, Texas 75703, who is replacing Paul Prejrean of Angleton whose term expired; Filiberto (Bert) Reyna, 3725 MacArthur Drive, Waco, Texas 76708, who is replacing Terri Schnorrenberg of Gatesville whose term expired; Lucinda "Cindy" Simons, 109 Quince, Hereford, Texas 79045, who is replacing W.G. Walker of Palestine whose term expired.

To be Adjutant General of Texas for a term to expire February 1, 2001: Major General Daniel James III, Texas National Guard, P.O. Box 5218, Austin, Texas 78763-5218, who is being reappointed.

To be members of the Texas Incentive and Productivity Commission for terms to expire February 1, 2001: Janice E. Collins, 8114 Ashburton, San Antonio, Texas 78250, who is being reappointed; John Mitchell Moore, 1501 FM 3025, Stephenville, Texas76401 who is being reappointed.

To be members of the Coastal Coordination Council for terms to expire May 31, 2000: Dr. William H. Clayton, 5222 Denver Drive, Galveston, Texas 77551, who is replacing Edward F. Stuart of Galveston whose expired; Elizabeth A. Nisbet, 233 Cape Code, Corpus Christi, Texas 78412 who is being reappointed.

To be members of the Texas Optometry Board for terms to expire January 31, 2005: Ann Appling Bradford, 2500 Dartmouth, Midland, Texas 79705, who is being reappointed; Joe W. DeLoach, O.D., 445 Trail View, Garland, Texas 75043, who is being reappointed; Mark A. Latta, O.D., 6405 Stoneham, Amarillo, Texas 79109, who is being reappointed.

Appointments Made February 15, 1999

To be members of the Texas Department of Housing and Community Affairs Board for terms to expire January 31, 2005: Michael E. Jones, 2769 South Chilton, Tyler, Texas 75701, who is being reappointed; Lydia R. Saenz, P.O. Box 756, Carruzo Springs, Texas 78834, who is replacing Harvey Clemons of Houston, Texas whose term expired; Marsha L. Williams, 5310 Keller Springs Road, #117, Dallas, Texas 75248, who is replacing Paul R. Rodriguez of McAllen whose term expired.

To be Commissioner of the Health and Human Services Commission for a term to expire February 1, 2001: Don Allen Gilbert, 3215 Exposition, Austin, Texas 78703, who is being reappointed.

To be members of the Texas Southern University Board of Regents for terms to expire February 1, 2005: Willard L. Jackson, Jr., 12202 West Ashley Circle, Houston, Texas 77071, who is being reappointed; Lori H. Moon, 631 Oak Tree Cove, Cedar Hill, Texas 75104, who is replacing Anthony D. Lyons of Dallas whose term expired.

Appointment made for March 30, 1999

To be Commissioner for the Pecos River Compact Commission for a term to expire January 23, 2005: Julian W. Thrasher, Jr., 1405 South Franklin, Monahans, Texas 79756. Mr. Thrasher will be replacing Brad Lee Newton of Fort Stockton whose term expired.

Appointment made April 6, 1999

To be Judge of the 215th Judicial District Court, Harris County until the next General Election and until his successor shall be duly elected and qualified: Levi J. Benton, 3230 Holly Hall, Houston, Texas 77054. Mr. Benton will be replacing Judge Dwight E. Jefferson of Houston who resigned.

Appointments made April 12, 1999

To be members of the Texas State Board of Public Accountancy for terms to expire January 31, 2005: Billy M. Atkinson, Jr., 21 Ellicott Way, Sugar Land, Texas 77479, who is replacing Wanda Lorenz of Dallas, Texas whose term expired; Kimberly Dryden, 5021 Everett Avenue, Amarillo, Texas 79106, who is replacing Roel Martinez of McAllen whose term expired; April L. Eyeington, 5758 Straub Road, College Station, Texas 77845 who is being reappointed; Edwardo B. Franco, 5022 Montego Bay, Irving, Texas 75038, who is replacing Lorraine Yancy of Austin, whose term expired; Robert C. Mann, 4916 Westbriar, Fort Worth, Texas 76109, who is replacing Frank Maresh of Austin whose term expired.

To be a member of the Texas Funeral Service Commission for a term to expire January 31, 2005: Jim C. Wright, P.O. Box 509, Wheeler, Texas 79096, who is replacing Robert G. Duncan of Victoria whose term expired.

To be a member of the Gulf States Marine Fisheries Commission for a term to expire March 17, 2002: L. Don Perkins, 1319 Winrock Boulevard, Houston, Texas 77057 who is being reappointed.

To be members of the Governing Board of the Texas Department of Economic Development for terms to expire February 1, 2005: Limas Jefferson, 4103 Woodbank Court, Seabrook, Texas 77586, who is replacing Robert W. Hsueh of Dallas whose term expired; Martha J. Wong, Ed.D., 5746 Ariel, Houston, Texas 77096, who is replacing Walter H. Criner, of Houston whose term expired; Marion Szurek,

2554 Lindenwood Drive, San Angelo, Texas 76904 who is being reappointed.

To be a member of the Prepaid Higher Education Tuition Board for a term to expire February 1, 2005: Beth Miller Weakley, 326 Wildrose Avenue, San Antonio, Texas 78209, who is being reappointed.

George W. Bush, Governor of Texas
Filed: April 13, 1999

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OFFICE OF THE ATTORNEY GENERAL

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

Open Record Request

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than 7 business days from the date of publication in the *Texas Register*.

ORQ-31. (ID# 125546). Request from Mr. William R. Archer, III. Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, regarding confidentiality of information required to be submitted to Department of Health under section 161.252 of the Health and Safety Code regarding ingredients in tobacco products.

TRD-9902243
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 19, 1999

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Opinions

JC-0033 (RQ-1083). Requested from The Honorable Eddie Lucio, Jr., Chair, Special Committee on Border Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711-2068, concerning whether a county judge may practice law in the courts of his county.

Summary. Section 82.064 of the Government Code precludes a county judge who is licensed to practice law from practicing as an attorney at law in any county or justice court over which the court on which the judge serves has original or appellate jurisdiction. Pursuant to article 26.06 of the Code of Criminal Procedure, the county judge need not accept a judicial appointment to represent an indigent defendant in a criminal case, but may accept it if he wishes to do so. The county judge's practice of law must be in compliance with the Texas Disciplinary Rules of Professional Conduct, and in particular, with rule 1.06 relating to conflicts of interest. The county judge must consider whether the conflict between his role as county judge and his ethical responsibilities as a lawyer would prevent him from taking a particular case.

JC-0034 (RQ-1137). Requested from The Honorable Raymie Kana, Colorado County Auditor Courthouse, Third Floor, Columbus, Texas, 78934, concerning authority of county attorney to provide legal services to commissioners court, and related questions.

Summary. While the Professional Prosecutors Act, chapter 46 of the Government Code, prevents a county attorney covered by it from entering into a contract with the county to provide it, for remuneration, with ancillary legal services not included among his statutory duties, it does not prevent the county attorney from voluntarily and gratuitously providing such services should he so choose. Because prosecutors covered by the Act give up their capacity to practice law privately, the Act does prevent a county attorney covered by it from entering in his private capacity into a consultation agreement with a municipality to provide the municipal court with legal advice. Nor, absent specific statutory authority to do so, may the county attorney enter into such a contract in his official capacity.

JC-0035 (RQ-1215). Requested from The Honorable Bill G. Carter Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, concerning whether a home-rule municipality may adopt an ordinance requiring residential construction contractors to use the franchisee selected by the city for weekly residential and commercial garbage removal.

Summary. A home-rule municipality may adopt an ordinance requiring residential construction contractors to use the franchisee selected by the city for weekly residential and commercial garbage removal to collect and haul customary debris from a construction site.

JC-0036 (RQ-1200). Requested from The Honorable Ronald D. Hankins, Somervell County Attorney, P.O. Box 1335, Glen Rose, Texas, 76043, concerning whether a county may build, maintain, or

improve city streets that are not integral parts of or connecting links with county roads or state highways.

Summary. A county may build, maintain, or improve city streets that are not integral parts of or connecting links with county roads or state highways in accordance with section 251.012 of the Transportation Code, if such expenditures serve a county purpose. However, a county may not expend proceeds of bonds issued or taxes levied pursuant to article III, section 52(b) or (c) of the Texas Constitution for such city streets. Attorney General Opinion JM-892 (1988) and Letter Opinion 97- 084 are overruled to the extent they provide that a county may expend county funds in accordance with section 251.012 and its predecessor only to improve city streets that are integral parts of or connecting links with the county roads or state highways.

TRD-9902347
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 21, 1999

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Requests for Opinions

RQ-0052. Requested from The Honorable Tim Curry, Tarrant County Criminal District Attorney, 401 Belknap Street, Fort Worth, Texas, 76196-0201, concerning whether a sheriff must comply with the competitive bidding statutes to expend fees paid by a jail commissary vendor (Request Number 0052-JC).

RQ-0053. Requested from The Honorable Michael Wenk, Hays County Criminal District Attorney, 110 East Martin Luther King, San Marcos, Texas, 78666, concerning whether article 5.45, Code of Criminal Procedure applies when a peace officer escorts a victim of family violence back to the scene of the assault, and related questions (Request Number 0053-JC).

RQ-0054. Requested from The Honorable Ken Armbrister, Chair, Committee on Criminal Justice, Texas State Senate, P.O. Box 12068, 1E.12, Austin, Texas, 78711, concerning disclosure requirements for performance of embalming, and related questions (Request Number 0054-JC).

TRD-9902348
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 21, 1999

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TEXAS ETHICS COMMISSION

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

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

Opinions

EAO-410. Whether a member of the Texas Real Estate Commission may teach courses for prospective and current commission licensees. (AOR-453)

Summary. A member of the Texas Real Estate Commission ("TREC") should not teach courses that satisfy TREC requirements for prospective or current licensees.

EAO-411. Whether a political committee may issue checks to members of the legislature to replace checks that were given to members before the beginning of the moratorium provided for in Election Code section 253.034(a). The checks had been written on a closed account. (AOR-454)

Summary. A member of the legislature may not take receipt of a check during the moratorium period set out in Election Code section 253.034(a) in a situation in which the check is intended to replace an invalid check that was delivered before the moratorium began.

EAO-412.. Regarding the application of Government Code section 572.058 to a situation in which a member of the Texas Higher Education Coordinating Board would serve as a nonvoting member of the advisory board of a local nonprofit hospital. The nonprofit hospital has agreed to donate land to a state university and intends to enter into an agreement with the university pursuant to which the hospital would serve as a medical education facility. The Coordinating Board "will be asked to approve the donation of land from the nonprofit hospital . . . and may be called upon to consider and approve program offerings and/or physical facilities for the medical education facility." (AOR-455)

Summary. A member of the Texas Higher Education Coordinating Board who is also a nonvoting member of the advisory board of a nonprofit entity should disclose his position with the nonprofit entity and recuse himself from any Coordinating Board decision regarding acceptance of a donation of land from the nonprofit entity or regarding approval of an agreement between the nonprofit entity and a state university.

EAO-413. Whether a retired judge may use unexpended political contributions to make a contribution of more than $100 in a calendar year to a judicial candidate. (AOR-456)

Summary. A retired judge who still has a campaign treasurer appointment on file is subject to the restriction in Election Code section 253.1611 and may not contribute more than $100 a year to any other candidate or to any officeholder. A retired judge who has terminated his or her campaign treasurer appointment is no longer a candidate and is not subject to the restriction in section 253.1611.

TRD-9902235
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: April 16, 1999

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PROPOSED RULES

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

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

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

Subchapter C. Minimum Standards for Accreditation of Libraries in the State Library System

13 TAC §1.77

The Texas State Library and Archives Commission proposes an amendment to §1.77, concerning local government support for public libraries. The purpose of this amendment is to add to the definition of local government sources those libraries established as library districts by the provisions of Local Government Code, Chapter 326.

This amendment reflects state legislation passed allowing the establishment of public libraries through public library taxing districts under certain conditions.

Jeanette Larson, Director of the Library Development Division, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the section.

Ms. Larson also has determined that for each of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section is to bring up to date the Commission rules to reflect the state legislation allowing the establishment of public library taxing districts.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under the Government Code§441.006(a) and §441.009, which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The proposed amendment affects Government Code §441.127 and §441.136 and Local Government Code, Chapter 326.

§1.77. Public Library: Local Government Support.

At least half of the annual local operating expenditures required to meet the minimum level of per capita support for accreditation must be from local government sources. A public library that expends at least $10 per capita is exempt from this membership criterion if it shows evidence of some library expenditures from local government sources and is open to citizens under identical conditions without charge. Local government sources are defined as money appropriated by library taxing districts, by school districts, or by city or county governments from their general revenue moneys.

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

Filed with the Office of the Secretary of State, on April 14, 1999.

TRD-9902189
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 463–5440

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Chapter 5. County Librarian Certification

13 TAC §§5.7–5.9

The Texas State Library and Archives Commission proposes new §§5.7-5.9 relating to county librarian certification. The sections provide a means of processing complaints from and about county librarians and certifying librarians from other states.

The purpose of the new rules is to bring Chapter 5 more closely in conformance with Government Code 441.007, 441.0071, and 441.0072.

Comments on the proposed rules may be submitted to Jeanette Larson, Director of the Library Development Division, P.O. Box 12927, Austin, Texas 78711-2927.

Jeanette Larson, Director of the Library Development Division, has determined that for each year of the first five years the new rules are in effect there will be no fiscal implications for state and local government. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the new rules.

Ms. Larson also has determined that for each of the first five years the section is in effect the public benefits as a result of adopting the proposed rules will be to insure continuous library service in counties funding public libraries.

The new rules are proposed under the Government Code §441.006(a) and §441.007(a) which provides the Commission with authority to govern the Texas State Library and adopt rules on certification of county librarians.

The proposed new rules affect Government Code §§441.007, 441.0071, and 441.0072.

§5.7. Certification of Persons from Other States.

The commission may grant county librarian certification to persons holding a certificate from another state if the requirements for certification from the other state are substantially equivalent to those in §§5.1-5.3 of this section, relating to County Librarian Certification.

§5.8. Complaints Against County Librarians.

(a) A person may file a complaint with the commission that a county librarian is not properly certified.

(b) The commission shall maintain records of any complaint filed with the commission regarding the certification of a county librarian in accordance with the specific requirements of Government Code, §441.007(d) and §441.007(e).

§5.9. Administrative Hearing.

(a) An administrative hearing is available to a person who is denied certification, denied certification at the desired grade level, or whose certification is not renewed or is revoked.

(b) A person who desires an administrative hearing must make the request in writing to the Director and Librarian who will refer the case to the State Office of Administrative Hearings.

(c) All contested cases not resolved by commission staff shall be referred to the State Office of Administrative Hearings for disposition in accordance with Administrative Procedure Act (Government Code, Chapter 2001).

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

Filed with the Office of the Secretary of State, on April 14, 1999.

TRD-9902190
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 463–5440

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 12. Coal Mining Regulations

The Railroad Commission of Texas proposes repeals of §12.804, relating to reclamation objectives and priorities; §12.805, relating to reclamation project evaluation; §12.806, relating to consent to entry; §12.807, relating to entry for studies or exploration; §12.808, relating to entry and consent to reclaim; §12.809, relating to land eligible for acquisition; §12.810, relating to procedures for acquisition; §12.811, relating to acceptance of gifts of land; §12.812, relating to management of acquired lands; §12.813, relating to disposition of reclaimed lands; §12.814, relating to operations on private land; and §12.816, relating to liens. The Commission also proposes new §12.804, relating to reclamation objectives and priorities; §12.805, relating to utilities and other facilities; §12.806, relating to limited liability; §12.807, relating to contractor responsibility; §12.808, relating to eligible noncoal lands and water; §12.809, relating to reclamation priorities for noncoal program; §12.810, relating to exclusion of certain noncoal reclamation sites; §12.811, relating to land acquisition authority - noncoal; §12.812, relating to lien requirements; §12.813, relating to written consent for entry; §12.814, relating to entry and consent to reclaim; §12.816, relating to liens; §12.818, relating to entry for emergency reclamation; §12.819, relating to land eligible for acquisition; §12.820, relating to procedures for acquisition; §12.821, relating to acceptance of gifts of land; §12.822, relating to management of acquired land; and §12.823, relating to disposition of reclaimed lands. The Commission also proposes amendments to §12.801, relating to definitions; §12.803, relating to eligible coal lands and water; and §12.815, relating to appraisals.

All of the proposed changes and additions are required for the commission to continue to demonstrate that its program is no less effective than the requirements of the Office of Surface Mining Reclamation and Enforcement (OSM), United States Department of the Interior, for surface coal mining regulation processes.

Amendments to §12.801 include new definitions of "abandoned mine reclamation fund or fund," "eligible lands and water," "emergency," "extreme danger," "left or abandoned in either an unreclaimed or inadequately reclaimed condition - lands and water," "OSM," "permanent facility," "project," "reclamation activity," and "state reclamation program." The amended definition of "Texas abandoned mine reclamation fund" substitutes the word "account" for "fund."

Amendments to §12.803 include deleting subsection (b), relating to the reclamation of noncoal lands, and adding paragraphs (4) through (8), relating to reclamation of coal lands mined after August 3, 1977.

Section 12.804, relating to reclamation objectives and priorities, is proposed to be repealed. Proposed new §12.804, relating to reclamation objectives and priorities, requires that reclamation be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

Section 12.805, relating to reclamation project evaluation, is proposed to be repealed. This section sets out factors to be considered in prioritizing potential reclamation projects. These issues are addressed by proposed new §12.804. Proposed new §12.805, relating to utilities and other facilities, addresses adverse effects on water supplies. It also authorizes enhancement of facilities or utilities during reclamation if necessary to meet applicable public health and safety standards.

Section 12.806, relating to consent to entry, is proposed to be repealed. Matters relating to entry and consent are addressed in proposed new §12.814. Proposed new §12.806, relating to limited liability, provides that the commission shall not be responsible for costs and damages associated with reclamation activities under certain circumstances.

Section 12.807, relating to entry for studies or exploration, is proposed to be repealed. Entry for studies or exploration is addressed in proposed new §12.814. Proposed new §12.807, relating to contractor responsibility, requires that a bidder for an abandoned mine land (AML) contract must be eligible at the time of contract award to receive a permit to conduct surface coal mining operations.

Section 12.808, relating to entry and consent to reclaim, is proposed to be repealed. Entry and consent to reclaim is addressed under proposed new §12.814. Proposed new §12.808, relating to eligible noncoal lands and water, specifies the circumstances under which the commission can reclaim lands or water impacted by mining for materials other than coal.

Section 12.809, relating to land eligible for acquisition, is proposed to be repealed. Land eligible for acquisition is addressed under proposed new §§12.811 and 12.819. Proposed new §12.809, relating to reclamation priorities for noncoal lands and water, sets out the commission's reclamation priorities for protection of public health, safety, general welfare and property, restoration of land and water resources and previously degraded environment, enhancement of facilities or utilities, grants for these activities or construction, and qualifications for these grants.

Section 12.810, relating to procedures for acquisition, is proposed to be repealed. Procedures for acquisition are addressed in proposed new §12.820. Proposed new §12.810, relating to exclusion of certain noncoal reclamation sites, prohibits use of abandoned mined land reclamation funds for remediation of sites subject to regulation under the federal Uranium Mill Tailings Radiation Control Act or the federal Comprehensive Environmental Response Compensation and Liability Act.

Section 12.811, relating to acceptance of gifts of land, is proposed to be repealed. Acceptance of gifts of land is addressed in proposed new §12.821. Proposed new §12.811, relating to land acquisition authority - noncoal, provides that provisions of §§12.813, 12.814, and 12.818 through 12.823 (relating to written consent to entry; entry and consent to reclaim; entry for emergency reclamation; land eligible for acquisition; procedures for acquisition; acceptance of gifts of land; management of acquired land; and disposition of reclaimed land) apply to the commission's noncoal program.

Section 12.812, relating to management of acquired lands, is proposed to be repealed. Management of acquired lands is addressed under proposed new §12.822. Proposed new §12.812, relating to lien requirements, provides that the lien requirements of §§12.815 through 12.817 (relating to appraisals, liens, and satisfaction of liens), apply to the noncoal reclamation program.

Section 12.813, relating to disposition of reclaimed lands, is proposed to be repealed. Proposed new §12.813, relating to written consent for entry, requires written consent from landowner prior to entry on land for purposes of conducting reclamation activities.

Section 12.814, relating to operations on private land, is proposed to be repealed. Conditions for entry to land are incorporated into proposed new §§12.813 and 12.814. Proposed new §12.814, relating to entry and consent to reclaim, sets out the conditions that must be met before the commission can enter and reclaim property.

The commission proposes to amend §12.815(d), relating to appraisals, to update internal references.

Section 12.816, relating to liens, is proposed to be repealed. Proposed new §12.816, relating to liens, requires that the commission notify the land owner prior to placing a lien on reclaimed property.

Proposed new §12.818, relating to entry for emergency reclamation, authorizes the commission to enter land to conduct remedial work where an emergency exists or if necessary to gain access to land upon which an emergency exists.

Proposed new §12.819, relating to land eligible for acquisition, sets out conditions under which the commission may acquire land to conduct reclamation.

Proposed new §12.820, relating to the procedures for acquisition by commission, sets out the procedures the commission must follow to acquire land for reclamation.

Proposed new §12.821, relating to the acceptance of gifts of land by commission, sets out the conditions under which the commission may accept gifts of land.

Proposed new §12.822, relating to the management of acquired land by commission, authorizes the use of acquired land for any lawful purpose consistent with necessary reclamation activities.

Proposed new §12.823, relating to the disposition of reclaimed lands by commission, establishes procedures for sale of land acquired by commission for reclamation.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be no fiscal impacts to state or local governments as a result of their adoption. The new requirements applicable to the commission will impose no new costs on the commission.

Mr. Hodgkiss has determined that for each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be no increased costs of compliance with the amended rules. These amendments are largely housekeeping measures that are anticipated to have no practical effect in Texas but will keep the Texas program in compliance with OSM requirements. Further, the rules relate to reclamation activities of the commission, not the regulated industry.

Mr. Hodgkiss has also determined that the public benefit from the adoption of the proposed amendments will be continued compliance with requirements of OSM.

The commission has not requested a local employment impact statement, pursuant to Texas Government Code, §2001.022.

Comments on the proposed sections should be submitted to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5 p.m. on the 15th day after publication in the *Texas Register*.

Subchapter R. Texas Abandoned Mine Land Reclamation Program

16 TAC §§12.804–12.814, 12.816

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

The repeals are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeals.

§12.804. Reclamation Objectives and Priorities.

§12.805. Reclamation Project Evaluation.

§12.806. Consent to Entry.

§12.807. Entry for Studies or Exploration.

§12.808. Entry and Consent to Reclaim.

§12.809. Land Eligible for Acquisition.

§12.810. Procedures for Acquisition.

§12.811. Acceptance of Gifts of Land.

§12.812. Management of Acquired Lands.

§12.813. Disposition of Reclaimed Lands.

§12.814. Operations on Private Land.

§12.816. Liens.

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902224

Mary Ross McDonald

Deputy General Counsel, Office of the General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: May 30, 1999

For further information, please call: (512) 463–7008

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16 TAC §§12.801, 12.803–12.816, 12.818–12.823

The amendments and new sections are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed amendments and new sections.

§12.801. Definitions.

The following words and terms, when used in this subchapter (relating to the Texas Abandoned Mine Land Reclamation Program), shall have the following meanings unless the context clearly indicates otherwise:

(1) Abandoned Mine Reclamation Fund or Fund - A special fund established by the United States Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Federal Act.

(2) Eligible lands and water - Land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Lands and water damaged by coal mining operations after August 3, 1977, and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in §12.803 of this title (relating to Eligible Coal Lands and Water). Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes shall be those sites that meet the eligibility requirements specified in §§12.808 and 12.810 of this title (relating to Eligible Lands and Water Prior to Certification and to Eligible Lands and Water Subsequent to Certification). For additional eligibility requirements for water projects, see §12.805 of this title (relating to Utilities and Other Facilities), and for lands affected by remining operations, see Section 404 of the Federal Act.

(3) [~~(1)~~] Emergency - A sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

(4) [~~(2)~~] Extreme danger - A condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

(5) [~~(3)~~] Left or abandoned in either an unreclaimed or inadequately reclaimed condition - Lands and water:

(A) which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 402(g)(4) of the Federal Act, and on which all mining has ceased; [~~where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and~~]

(B) which continue in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public; and

(C) for which there is no continuing reclamation responsibility under state or federal laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Federal Act.

(6) OSM - The Office of Surface Mining Reclamation and Enforcement.

(7) Permanent facility - Any structure that is built, installed, or established to serve a particular purpose, or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(8) Project - A delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of the state or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

(9) Reclamation activity - The reclamation, abatement, control, or prevention of adverse effects of past mining.

(10) State reclamation program - A program established by the state in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

(11) [~~(4)~~] Texas Abandoned Mine Reclamation Fund or State Fund - A separate account [~~fund~~] established by the state for the purpose of accounting for moneys granted by the Director under an approved state reclamation program and other moneys authorized by these Regulations to be deposited in the Fund.

§12.803. Eligible Coal Lands and Water.

(a) Coal mined lands and associated waters shall be [~~are~~] eligible for reclamation activities if:

(1) they were mined for coal or affected by coal mining processes;

(2) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; [~~and~~]

(3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture shall [~~will~~] render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys may be sought from the Texas Abandoned Mine Land Fund.

(b) Notwithstanding subsection (a) of this section, coal lands and waters in the state damaged and abandoned after August 3, 1977, by coal mining processes shall also be eligible for funding if the Secretary finds in writing that:

(1) they were mined for coal or affected by coal mining processes; and

(2) the mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and either:

(A) the date on which the Secretary approved the state regulatory program pursuant to Section 503 of the Federal Act, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(B) November 5, 1990, and that the surety of the mining operator became insolvent during such period, and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) the site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the Federal Act. Priority shall be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(c) The commission may expend funds made available under paragraphs 402(g)(1) and (5) of the Federal Act for reclamation and abatement of any site eligible under subsection (b) of this section if the commission, with the concurrence of the Secretary, makes the findings required in subsection (b) of this section and the commission determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to subsection (a) of this section that qualify as a priority 1 or 2 site under Section 403(a) of the Federal Act.

(d) With respect to lands eligible pursuant to subsection (b) or (c) of this section, moneys available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

(e) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the commission performing reclamation under subsection (b) or (c) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Federal Act or Subchapter K of the State Act.

(f) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of the Federal Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by §12.312 and §12.313 of this title (relating to Procedure for Seeking Release of Performance Bond and to Criteria and Schedule for Release of Performance Bond). If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement.

[~~(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if:~~]

[~~(1) the conditions of subsection (a) of this section have been met;~~]

[~~(2) the reclamation has been requested by the Governor; and~~]

[~~(3) all reclamation with respect to abandoned coal mine land and water has been accomplished within the state or the reclamation is necessary for the protection of the public health, and safety.~~]

§12.804. Reclamation Objectives and Priorities.

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 Federal Register 14810-14819, March 6, 1980).

(b) Reclamation projects shall reflect the priorities of Section 403(a) of the Federal Act. Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

§12.805. Utilities and Other Facilities.

(a) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in §12.803 of this title (relating to Eligible Coal Lands and Water), if the commission finds in writing, as part of its eligibility opinion,

that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(b) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, state, or federal public health or safety requirement. Enhancement shall not include any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

§12.806. Limited Liability.

The commission shall not be liable under any provision of federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved commission abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the commission. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

§12.807. Contractor Responsibility.

To receive AML funds, every successful bidder for an AML contract must be eligible under §12.215 of this title (relating to Review of Permit Applications) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/ Violator System for each contract to be awarded.

§12.808. Eligible Noncoal Lands and Water.

(a) Following certification by the commission of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those:

(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(2) for which there is no continuing reclamation responsibility under state or other federal laws.

(b) If eligible coal problems are found or occur after certification, the commission shall address the coal problem utilizing state share funds no later than the next grant cycle, subject to the availability of funds distributed to the commission in that cycle. The coal project shall be subject to the coal provisions specified in Sections 401 through 410 of the Federal Act.

§12.809. Reclamation Priorities for Noncoal Program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification by the commission of the completion of all known coal projects, the projects and construction of public facilities identified in subsection (a) of this section shall reflect the following priorities in the order stated:

(1) the protection of public health, safety, general welfare, and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) the protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) the restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, state, or federal public health or safety requirements. Enhancement shall not include any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in subsection (a) of this section, if the governor determines that there is a need for activities or construction of specific public facilities related to the coal or minerals industry, and the governor or the commission at the governor's request submits a grant application as required by subsection (e) of this section and the Director concurs with the application as set forth in subsection (e) of this section, the Director may grant funds made available under section 402(g)(1) of the Federal Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in subsection (d) of this section, the governor, or the commission at the governor's request, must submit a grant application that specifically sets forth:

(1) the need or urgency for the activity or the construction of the public facility;

(2) the expected impact the project will have on the coal or minerals industry in the state;

(3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) documentation from other local, state, and federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by those agencies;

(5) the impact on the state, the public, and the minerals industry if the activity or facility is not funded;

(6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) an analysis and review of the procedures used by the commission to notify and involve the public in this funding request and a copy of all comments received and their resolution by the commission.

§12.810. Exclusion of Certain Noncoal Reclamation Sites.

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901, et seq.) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.).

§12.811. Land Acquisition Authority - Noncoal.

The requirements specified in §§12.813, 12.814, and 12.818 - 12.823 of this title (relating to Written Consent for Entry; Entry and Consent to Reclaim; Entry for Emergency Reclamation; Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; Management of Acquired Land; and Disposition of Reclaimed Lands, respectively) shall apply to the commission's noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term coal, the word noncoal should be used.

§12.812. Lien Requirements.

The lien requirements in §§12.815 - 12.817 of this title (relating to Appraisals; Liens; and Satisfaction of Liens, respectively), shall apply to the commission's noncoal reclamation program under §12.808 of this title (relating to Eligible Noncoal Lands and Water), except that for purposes of this section, references made to coal shall not apply. In lieu of the term coal, the word noncoal should be used.

§12.813. Written Consent for Entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power shall be undertaken only after reasonable efforts have been made to obtain written consent.

§12.814. Entry and Consent to Reclaim.

(a) The commission, its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) The commission shall be entitled to enter any property to conduct studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(c) The commission shall be entitled to enter property adversely affected by past coal mining practices or other property necessary to have access to that property to perform the activities necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the commission:

(1) makes a finding of fact that:

(A) land or water resources have been adversely affected by past coal mining practices;

(B) the adverse effects are at a stage at which action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken to protect the public interest; and

(C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices either are not known or readily available or will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

(2) gives written notice of intent to enter at least 30 days prior to entering the property:

(A) to the owner, if known, by certified mail, return receipt requested. A copy of the findings required under paragraph (1) shall be included with the notice; or

(B) if the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where the notice is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required under paragraph (1) of this subsection may be inspected or obtained

§12.815. Appraisals.

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

(d) Appraisals for privately owned land which fall under §12.816 [~~§§12.816 (a)(1),(2) and (3)~~] of this title (relating to Liens) may be obtained from either an independent or staff professional appraiser.

§12.816. Liens.

(a) Not later than six months after the date projects to reclaim privately owned land are completed, the commission:

(1) shall itemize the money spent; and

(2) may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a significant increase in property value. However, prior to the time of the actual filing of a lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property involved.

(b) The statement shall be a lien on the land second only to a property tax lien. The amount of the lien shall not exceed the amount determined by either of two appraisals, as provided under §12.815 of this title (relating to Appraisals), to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(c) A lien shall not be filed under this section against the property of a person who:

(1) owned the surface before May 2, 1977; and

(2) did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

(d) Not later than the 60th day after the date the lien is filed, an affected landowner may petition the commission for a hearing on the amount of the lien. The hearing and any appeal shall be conducted pursuant to Chapter 2001, Government Code.

(e) The commission may waive the lien if:

(1) the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation activities; or

(2) the reclamation work performed on private land primarily benefits health, safety, and environmental values of the grantee's community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore the land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

§12.818. Entry for Emergency Reclamation.

(a) The commission may enter land where an emergency exists and other land necessary to have access to that land to:

(1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices; and

(2) perform activities necessary or expedient to protect the public health, safety, or general welfare.

(b) Entry under this section shall be considered an exercise of the police power and not an act of condemnation of property or trespass.

§12.819. Land Eligible for Acquisition.

(a) This state may acquire by purchase, donation, or condemnation land that is adversely affected by past coal mining practices if:

(1) it is in the public interest; and

(2) the commission determines and makes written findings that:

(A) acquiring the land is necessary for successful reclamation;

(B) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(i) serve recreational and historical purposes;

(ii) serve conservation and reclamation purposes; or

(iii) provide open space benefits; and

(C) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices or acquisition of coal refuse disposal sites and the coal refuse on those sites will serve the purposes of this subchapter, or public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) OSM approves the acquisition by purchase or condemnation in advance. The commission shall acquire only such interests in land under this subchapter as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(1) such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(2) adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

§12.820. Procedures for Acquisition.

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained by the commission. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The commission, when acquiring land under this title, shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 41 CFR Part 114-50.

§12.821. Acceptance of Gifts of Land.

(a) The commission under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in §12.819 of this title (relating to Land Eligible for Acquisition).

(b) Offers to make a gift of land or interest in land to the commission shall be in writing and shall include:

(1) a statement of the interest which is being offered;

(2) a legal description of the land and a description of any improvements on it;

(3) a description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(4) a statement that:

(A) the donor is the record owner of the interest being offered;

(B) the interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(C) there are no adverse claims against the interest offered;

(D) there are not unredeemed tax deeds outstanding against the interest offered; and

(E) there is no continuing responsibility by the operator under state or federal statutory law for reclamation; and

(5) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that the conveyance is made "as a gift under the Texas Surface Coal Mining and Reclamation Act." Title to donated land shall be in the name of the State of Texas.

§12.822. Management of Acquired Land.

Land acquired under this title may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the commission shall provide that all user fees collected shall be deposited in the Texas Abandoned Mine Reclamation Fund.

§12.823. Disposition of Reclaimed Lands.

(a) If land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under rules adopted to ensure that the land is put to proper use consistent with local plans, if any, as determined by the commission.

(b) The land may be sold only when authorized by the Secretary of the Interior if federal money was involved in the acquisition of the land to be sold.

(c) The commission may transfer administrative responsibility for land acquired under this subchapter (relating to Texas Abandoned Mine Land Reclamation Program) to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(1) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) that the administrative responsibility for the land shall revert to the commission if, at any time in the future, the land is not used for the purposes specified.

(d) The commission, after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is located. Prior to the disposition of any land acquired under this subchapter, the commission shall publish a notice of the proposed land disposition.

(e) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(f) All moneys received from disposal of land under this title shall be deposited in the Texas Abandoned Mine Reclamation Fund.

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902225

Mary Ross McDonald

Deputy General Counsel, Office of the General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: May 30, 1999

For further information, please call: (512) 463–7008

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Part IX. Texas Lottery Commission

Chapter 401. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

16 TAC §401.312

The Texas Lottery Commission proposes new section 16 TAC §401.312, relating to converting specific lottery prize installment payments. The proposed section will allow certain lottery prize winners to choose to accelerate the payment of all remaining installment prize payments, so long as the prize winner claimed its installment prize prior to October 21, 1998. The new section is intended to implement a portion of new federal legislation relating to acceleration of lottery prizes paid in installment payments.

Liz Day, Financial Manager, has determined that for the first five-year period the section as proposed will be in effect the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is, as follows: FY 1999, $0.00; FY 2000, $0.00; FY 2001, $0.00; FY 2002, $0.00; and FY 2003, $0.00.

Ms. Day also has determined that for each year of the first five-year period the section as proposed will be in effect the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules is, as follows: FY 1999, $0.00; FY 2000, $0.00; FY 2001, $0.00; FY 2002, $0.00; and FY 2003, $0.00.

Ms. Day also has determined that for each year of the first five-year period the section as proposed will be in effect the estimated increases in revenue to the state or to local governments as a result of enforcing or administering the rules is, as follows: FY 1999, $0.00; FY 2000, $30,000,000.00; FY 2001, $0.00; FY 2002, $0.00; and FY 2003, $0.00. This revenue estimate is made with the knowledge that the Commission has no precise information regarding the exact number of lottery installment prize winners who may choose to take advantage of the proposed section. Ms. Day also has determined that for each year of the first five-year period the section as proposed will be in effect the estimated decreases in revenue to the state or to local governments as a result of enforcing or administering the rule is, as follows: FY 1999, $0.00; FY 2000, $70,000.00; FY 2001, $70,000.00; FY 2002, $70,000.00; and FY 2003, $70,000.00.

Ms. Day also has determined that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

Ms. Day also has determined that for each year of the first five-year period the section as proposed will be in effect the public benefits anticipated as a result of adoption of the proposed rule is, as follows: FY 1999, $0.00; FY 2000, $0.00; FY 2001, $0.00; FY 2002, $0.00; and FY 2003, $0.00. This estimate is made with the knowledge that the specific lottery installment prize winners who choose to take advantage of the proposed section, have total control over the use of the converted installment lottery prize payments.

Ms. Day has also determined that for each year of the first five-year period the section as proposed will be in effect the probable economic cost to persons required to comply with the rule is, as follows: FY 1999, $0.00; FY 2000, $0.00; FY 2001, $0.00; FY 2002, $0.00; and FY 2003, $0.00.

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

Comments on the proposed section may be submitted to Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The section is proposed under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery. The proposed section has been reviewed by legal counsel and legal counsel has found that the proposed rule is within the agency's authority to adopt.

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

§401.312. Converting Specific Installment Payments.

(a) Definitions.

(1) "Lottery prizes which are paid in installments" - Lottery prizes that are paid in installment payments, in accordance with the lottery game procedures and Texas Lottery applicable agency rules.

(2) "Win for Life" - A particular instant ticket game, identified as Game 21.

(3) "Request to Convert Specific Installment Payments" - The form provided by the Texas Lottery to be completed by the claimant when choosing to request the Texas Lottery to convert specific installment payments.

(4) "Section 451(h) of the Internal Revenue Code of 1986" - The applicable federal law, including the most recent addition of Section 451(h) enacted on October 21, 1998, as part of the Tax and Trade Release Extension Act of 1998.

(5) "Specific Installment Payments" - Remaining installment payments attributed to a lottery prize which was claimed by a prize winner prior to October 21, 1998.

(6) "Prize Winner" - The name of the claimant as it appears on the lottery claim form and recognized by the Texas Lottery as the prize winner.

(b) A prize winner who claimed prior to October 21, 1998, a lottery prize which is paid in installments, may choose to request the Texas Lottery to accelerate the payment of all remaining installments. This rule does not apply to a "Win for Life" prize winner.

(c) Procedures for a prize winner to request acceleration of all remaining installment payments. All of the following requirements must be met before the Texas Lottery will accelerate the specific installment payments:

(1) The prize winner must submit the "Request to Convert Specific Installment Payments" to the Texas Lottery.

(2) The "Request to Convert Specific Installment Payments" must include a certification that the prize winner meets the requirements of Section 451(h) of the Internal Revenue Code of 1986.

(3) The "Request to Convert Specific Installment Payments" must contain a notarized signature of the person with authority to bind the prize winner and the person's official title.

(4) The "Request to Convert Specific Installment Payments" must be received by the Texas Lottery no sooner than July 1, 1999 and no later than November 30, 2000. Receipt is determined by post-marked date.

(5) Once received, the "Request to Convert Specific Installment Payments" will not be rescinded or amended.

(d) Calculation of value. If the executive director accelerates the payment of all of the remaining installments, then securities and /or cash held for the prize winner, which represents the lesser of the Texas Lottery's book value (the daily recalculated amortized cost of investments under the interest method) or fair market value (the value of investments at any point in time as determined by the market place) of that portion of the future installment payments that are to be accelerated, less any applicable taxes, delinquencies, or other withholding as provided by the law, shall be distributed. The valuation of the securities at the lower of the Texas Lottery's book value or fair market value and determination of the net present value of the accelerated payments shall be at the sole determination and discretion of the executive director.

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

Filed with the Office of the Secretary of State on April 16, 1999.

TRD-9902236
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter H. Licensing

22 TAC §131.132

The Texas Board of Professional Engineers proposes an amendment to §131.132, concerning licensing.

The amendment will establish provisions for the issuance of provisional licenses in accordance with the Texas Engineering Practice Act, §20A.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Mr. Speed 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 established provisions for the issuance of provisional licenses in accordance with the Texas Engineering Practice Act, §20A. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §20A is affected by the proposed amendment.

§131.132. Provisional Licenses.

(a) The board may [~~does not~~] issue a provisional license [~~licenses at this time~~] upon approval of the executive director to any applicant who submits proof of a current engineering license in another National Council of Examiners for Engineering and Surveying (NCEES) jurisdiction, provides a current NCEES record certifying status as a Model Law Engineer, submits a completed application form, and has not been sanctioned for a violation of any law or rule in the practice of engineering in any jurisdiction. The provisional license shall be non-renewable and valid for a period of one year from the date of issuance. A provisional license holder shall be subject to all laws and rules of the board and shall enjoy all benefits of licensure.

(b) The provisional license may be converted to a regular license by the executive director upon submission of five reference statements as described in §131.71(b) of this title (relating to References), and approval of those references within the context of previously submitted information. If the executive director does not approve the conversion of the provisional license to a regular license, the materials submitted to the board shall be considered an application for a regular license and shall be subject to the processes of §§131.111-131.116 of this title (relating to Board Review of Application).

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

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902240
John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 440-7723

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter A. General Provisions Relating to the Requirement of Licensure

22 TAC §§535.1–535.3

The Texas Real Estate Commission (TREC) proposes amendments to §535.1, concerning when a real estate license is required, §535.2, concerning the broker's responsibility, and §535.3, concerning compensation accepted by a salesperson. The amendments would generally shorten the sections by eliminating unnecessary provisions and combining other provisions. These changes are proposed in connection with TREC's pending review of its rules in Chapter 535 of the Texas Administrative Code. Adoption of the amendments would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

The amendment to §535.1 would clarify that Texas Civil Statutes, Article 6573a, (the Act) applies to those persons acting as real estate brokers or salespersons in Texas, and that a person not licensed in Texas may conduct real estate business from another state on the Internet, as well as by telephone or correspondence. Several subsections would be deleted as unnecessary since the issues they concern are either addressed elsewhere in TREC's rules or in the Act. The section also would be revised to combine a number of subsections which describe activities for which a license is not required, such as the performance of secretarial or clerical functions. A general definition of the terms "property" and "real property" would be provided for clarification of the terms used in TREC's rules.

The amendment to §535.2 would eliminate unnecessary provisions which address matters not within the jurisdiction of the commission, combine other provisions relating to the responsibility of the broker, and restate other provisions in clearer language. The amendment to §535.3 would broaden the scope of that section to address payment of compensation by salespersons as well as compensation paid to salespersons.

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

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in the number of TREC rules and greater ease in reading the remaining rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

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

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

§535.1. License Required.

(a) Texas Civil Statutes, Article 6573a (the Act) applies to persons acting as real estate brokers or salespersons within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, conducting business from another state by mail, telephone, the Internet, e-mail or other electronic medium is not considered acting within this state. [~~The Real Estate License Act requires licensure of persons negotiating within this state for the sale of real estate for another person and for compensation. The situs of the real estate or residence of its owner does not control.~~]

[~~(b) The Real Estate License Act does not govern activities in other states. Real estate licensure is not required if negotiations for the sale of Texas property are not carried on or conducted within the State of Texas.~~]

[~~(c) The Real Estate License Act is an agency law and requires licensure of those who would act as real estate agents in Texas, but the Texas Real Estate Commission does not approve or disapprove of land to be sold in Texas. There are no special requirements for a broker to offer foreign real property for sale in Texas.~~]

[~~(d) Negotiating from another state with someone within the State of Texas or offering property by mail from another state to residents of Texas does not require Texas real estate licensure.~~]

[~~(e) The Real Estate License Act permits Texas-licensed brokers to cooperate with and share earned commission with persons licensed as brokers by other states, but all negotiations within Texas must be handled by Texas licensees. For the purposes of this section, "states" includes the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.~~]

(b) [~~(f)~~] Unless otherwise exempted by the [~~this~~] Act, a person must be licensed as [~~either~~] a real estate broker or salesperson [~~in order~~] to show a broker's listings, [~~or~~] solicit listings of real property or perform any act defined as that of a real estate broker by the Act. An unlicensed person may be hired by a broker to act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person engages in no activity for which a license is required.

(c) [~~(g)~~] The employees, agents or associates of a licensed broker, including a corporation or limited liability company licensed as a broker, must be licensed as real estate brokers or salespersons if they [~~Real estate licensure is required of a real estate broker's employees, agents, or associates who~~] direct or supervise other persons

in the performance of [employees, agents, or associates while the other employees, agents, or associates are performing] acts for which a license [licensure] is required. [Provided, however, that] A license [licensure] is not required for the performance of secretarial, clerical, or administrative tasks , such as training personnel, performing duties generally associated with office administration and personnel matters. Unlicensed employees, agents, or associates may not solicit business for the broker or hold themselves out as authorized to act as real estate brokers or salespersons. [. "Administrative tasks" include, but are not limited to, the following:]

[(1) training or motivating personnel; and]

[(2) performing duties generally associated with office administration and personnel matters.]

(d) [(h)]As used in this chapter, the terms "property" and "real property" have the same meaning as "real estate" as that term is defined in the Act. [Real estate licensure is not required of a partnership acting as a real estate broker in Texas. A partner or non-partner employee who acts as a real estate agent in the partnership's name must be licensed as a real estate broker or salesperson.]

§535.2. Broker's Responsibility.

(a) [Other than as contemplated by this section, The Real License Act does not regulate the working agreements between or among licensees.]

[(b) Licensure as either a Texas real estate salesperson or broker does not require membership in any trade association or local board.]

[(c)] A broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly [may absent himself or herself as the broker chooses].

[(d) A salesperson may work in or out of a real estate office without direct supervision of the salesperson's sponsoring broker. This in no way lessens the degree of responsibility of the sponsoring broker for the salesperson's actions.]

[(e) A real estate salesperson is not required by this Act to sell a home or other real property owned by the salesperson through the salesperson's sponsoring broker. Such may be a matter of civil agreement between the two.]

(b) [(f)] A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision. A broker is obligated [It is the broker's obligation] under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent.

[(g) A broker is responsible for the authorized acts of the broker's associates whether they are licensed as salespersons or brokers.]

(c) [(h)] A broker is responsible for the proper handling of escrow monies placed with the broker, although the broker may authorize other persons to sign checks for the broker. [but whom the broker designates to sign checks is the broker's internal business and not regulated by this Act].

§535.3. Compensation to or paid by a [Accepted by] Salesperson.

A salesperson may not receive a commission or other fee except with the consent of the salesperson's sponsoring broker or the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee. A salesperson may not pay a commission or other fee to another person except with the consent of the salesperson's sponsoring broker. [A salesperson is not permitted to receive compensation for acts as a licensed real estate salesperson, except through the salesperson's sponsoring broker or through the broker under whom the salesperson was licensed when he or she earned the right to compensation, although the broker need not actually receive the money and pay it to the salesperson. Payments not made by or through the broker must be made with the broker's knowledge and consent.]

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902232
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 465–3900

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22 TAC §535.4

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.4, concerning compensation paid by a salesperson. The provisions in §535.4 would be moved to §535.3 in connection with a proposed amendment to that section. These changes are proposed as part of TREC's pending review of its rules in Chapter 535 of the Texas Administrative Code. Adoption of the repeal would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

Mark A. Moseley, General Counsel , has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. There is no anticipated impact on local or state employment as a result of implementing the repeal.

Mr. Moseley also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal will be a reduction in the number of TREC rules and greater ease in reading the remaining rules. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

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

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

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

§535.4. Compensation Paid by Salesperson.

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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465–3900

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Subchapter B. Definitions

22 TAC §§535.11, 535.14, 535.18

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.11, concerning the definition of real estate, §535.14, concerning offers to dispose of real estate, and §535.18, concerning auctions. These repeals are proposed in connection with TREC's review of the rules in Chapter 535 of the Texas Administrative Code and pending amendments to the subchapter in which the repealed sections are located. Adoption of the repeals would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

Section 535.11 lists a series of kinds of property which are not interests in real property. Because the term "real estate" is defined in Texas Civil Statutes, Article 6573a, (the Act), it is therefore unnecessary to devote a section of TREC rules to listing property interests which are not within the statutory definition. The repeal of §535.14 also would delete an unnecessary section; conduct by a person acting in another state is being addressed by a contemporaneous proposal to amend §535.1. The repeal of §535.18 would delete an unnecessary provision which merely restates the law.

Mark A. Moseley, General Counsel , has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals. There is no anticipated impact on local or state employment as a result of implementing the repeals.

Mr. Moseley also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be a reduction in the number of TREC rules and greater ease in reading the remaining rules. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

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

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

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

§535.11. Real Estate Defined.
§535.14. Offers to Dispose of Real Estate.
§535.18. Auctions.

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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 463–3900

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22 TAC §§535.12, 535.13, 535.15–535.17, 535.20, 535.21

The Texas Real Estate Commission (TREC) proposes amendments to §535.12, concerning general definitions, §535.13, concerning dispositions of real estate, §535.15, concerning negotiations, §535.16, concerning listings, §535.17, concerning appraisals, §535.20, concerning the procurement of prospects, and §535.21, concerning unimproved lot sales and listing publications. The amendments would generally shorten the sections by eliminating unnecessary provisions and combining other provisions. These changes are proposed in connection with TREC's pending review of its rules in Chapter 535 of the Texas Administrative Code. Adoption of the amendments would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

The amendment to §535.12 would delete subsections which are unnecessary because they merely restate the general definition of "real estate broker" contained in Texas Civil Statutes, Article 6573a, (the Act) or address issues which may be resolved by referring directly to the Act. The remaining language would be revised to make it easier to read. The amendment to §535.13 would combine several subsections to clarify the activities for which a person is required to be licensed and update the section to make it consistent with recent Attorney General Letter Opinion Number 98-119, which permits unlicensed employees of corporations and other business entities to act for their employers. The amendment also clarifies that an entity may be considered to be an owner if the entity either holds record title to the property or has an equitable title or right acquired by contract with the record title holder and that a corporation or limited liability company is required to be licensed as a real estate broker if it or its employee receives or expects to receive a valuable consideration from the record title holder for negotiating a sale or other disposition of the property.

The amendment to §535.15 would delete provisions concerning activities which may be performed by a broker's employees. The deleted provisions would be combined and moved to §535.1 in connection with a contemporaneous proposal to amend that section. The amendment to §535.16 would rewrite the section for clarity and delete unnecessary provisions which merely restate the law. A definition of the term "net listing" would be added to make the section easier to understand. The amendment to §535.17 would rewrite and shorten the section for clarity and delete subsections which merely restate the law

or which address issues which may be resolved by referring to the Act.

The amendments to §535.20 and §535.21 would rewrite the sections for clarity and would eliminate provisions which are repetitive or found elsewhere In TREC rules.

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

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the activities for which a real estate license is required and greater ease in reading TREC rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

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

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

§535.12. General.

(a) [~~The method of compensation, whether commission, salary, or otherwise, is not the sole criterion for requiring a real estate license. One who acts as a real estate agent but charges a set fee instead of taking a commission is still required to be licensed.~~]

[~~(b) Real estate sales commissions or fees are not fixed by the Real Estate License Act or by these sections.~~]

[~~(c) Licensure is not required for a person to list the person's property with a licensee. Compensation to the owner for granting the listing does not require licensure of the owner.~~]

[~~(d)~~] A person may invest in real estate or contract to purchase real estate and then sell it or offer to sell it without having a real estate license. A license [~~Texas real estate licensure~~] is not required for a person to buy or sell [~~of one who buys and sells~~] real property only for the person's own account.

(b) [~~(e)~~] A person [~~One~~] who owns property jointly [~~with another~~] may sell and convey title to his or her interest in the property, but the person must be licensed to act for compensation as an agent for the other owner unless otherwise exempted by Texas Civil Statutes, Article 6573a, (the Act) [~~from the requirement of licensure~~].

[~~(f) The granting of real estate licensure does not divest a person of previously held privileges.~~]

§535.13. Dispositions of Real Estate.

(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a real estate broker or salesperson. [~~Subleasing may be done without licensure for the sublessor's own profit but not for compensation to be paid by another unless the recipient is otherwise exempted from the requirement of licensure.~~]

(b) Unless otherwise exempted by Texas Civil Statutes, Article 6573a (the Act), a person who manages real property or collects rentals for an owner of real property and for a valuable consideration must be licensed if the person also rents or leases the property for the owner.

[~~(c) Unless otherwise exempted by this Act, those who hold themselves out to the general public as being in the property management business must possess real estate licensure. Those who manage real property for others and for compensation must be licensed.~~]

(c) [~~(d)~~] A person must be licensed as a real estate broker to operate [~~Real estate broker licensure is required for the operation of~~] a rental agency. This section does not prohibit employment of an answering service or unlicensed clerical or secretarial employees identified to callers as such to confirm information concerning the size, price, and terms of property advertised.

[~~(e) The Real Estate License Act does not require the licensing of a mobile home park.~~]

(d) [~~(f)~~] A real estate license [~~Real estate licensure~~] is not required for an individual employed [~~a person hired~~] by a corporation or other business entity for the purpose of buying real property for the entity or selling real property owned by the entity [~~corporation~~]. An entity is considered to be an owner if it holds record title to the property or has an equitable title or right acquired by contract with the record title holder. A corporation or limited liability company is considered to be acting as a broker and is required to be licensed under the Act if it or its employee receives, or expects to receive, a valuable consideration from the record title holder for negotiating a sale or other disposition of the property.

(e) [~~(g)~~] A real estate license [~~Real estate licensure~~] is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale of its parent corporation's real property.

(f) [~~(h)~~] Arranging for a person to occupy a vacant residential property is an act requiring a real estate license if the actor:

(1) does not own the property or lease the property from its owner;

(2) receives a valuable consideration; and

(3) is not exempted from the requirement of a license by the Act, §3.

§535.15. Negotiations.

(a) Locating and bringing together a buyer and seller [~~through correspondence, or telephone~~] constitutes negotiation if done from within the borders of Texas.

(b) A real estate license [~~Real estate licensure~~] is required for a person to solicit listings or [~~one~~] to negotiate in Texas for listings.

[~~(c) Real estate licensure is required for a person to act as an agent in the selling or exchanging of either commercial or residential properties~~]

[~~(d) Showing real property for sale, exchange, purchase, rent or lease is an act of a broker for which a real estate license is required if a person shows the property for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration.~~]

[(e) Real estate licensure is required of rental agents doing all solicitation by telephone unless such agents are employees of the owner of the property concerned.]

[(f) A clerical employee of a real estate broker is not required to be licensed if such employee engages in no solicitation work and does not hold himself or herself out as authorized to act as a real estate agent.]

[(g) Answering of the telephone and acts of a secretarial nature done in a broker's office do not require real estate licensure.]

[(h) A person can be hired by a broker to act as a hostess, attendant or custodian at and of homes which a broker offers for sale without coming within the purview of The Real Estate License Act, so long as such person does not engage in activities defined as acts of a broker or salesperson which require licensure.]

§535.16. Listings.

(a) Trade associations or other organizations which [A corporation formed so as to unite those who engaged in the real estate business for the purpose of exerting effectively a beneficial influence upon the real estate business and to] provide a computerized listing service for their [its] members, but which do [does] not receive compensation when the real estate is sold [for the sale of real estate] would not be required to be licensed under Texas Civil Statutes, Article 6573a (the Act)[this Act].

[(b) Licensure would be required of a trade association or organization if it or its listing service lists real property and expects to receive compensation, either directly or indirectly, as a result of the listings.]

(b) [(c)] A "net listing" is a listing agreement in which the broker's commission is the difference ("net") between the sales proceeds and an amount desired by the owner of the real property. A broker may not [should] take net listings unless [only when] the principal requires [insists upon] a net listing and [when] the principal appears to be familiar with current market values of real property. When a broker accepts a listing, the broker enters into a fiduciary relationship with the principal, whereby the broker is obligated to make diligent efforts to obtain the best price possible for the principal. The use of a net listing places an upper limit on the principal's expectancy and places the broker's interest above the principal's interest with reference to obtaining the best possible price. If a net listing is used, a broker should modify the listing agreement [Net listings should be qualified] so as to assure the principal of not less than the principal's desired price and to limit the broker to a specified maximum commission.

(c) [(d)] A real estate licensee is obligated to advise a property owner as to the licensee's opinion of the market value of a property when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

§535.17. Appraisals.

(a) A salesperson may make, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals [must be submitted] in the broker's name and the broker is responsible for the appraisals. [are the broker's responsibility. A real estate salesperson may not appraise real property for others and for compensation without such activity being conducted through the salesperson's sponsoring broker.]

[(b) Although a real estate license is required before a party may engage in the appraisal of real estate, a real estate license itself is not an appraiser's license.]

(b) [(c)] Texas Civil Statutes, Article 6573a (the Act) does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers. [This section does not cover a situation wherein a savings and loan association, mortgage bank, commercial bank, credit union, or any other financial institution, or its employees, in contemplation of making a loan, appraises a piece of property and charges and receives a fee for its services. If a financial institution or its employees appraise property for a fee and not in contemplation of making a loan based on the appraisal, the activity would be considered within the coverage of this section and a license would be required.]

[(d) Real estate licensure is not required for one to testify as to the value of real property, but if in preparing to testify, the person actually does appraise the property for another person and for compensation, licensure would be required.]

[(e) Real estate licensure is not required for an employee of an investment firm performing appraisals in the course of the employee's employment.]

[(f) A trade association or organization is required to be licensed as a real estate broker when it offers to appraise or actually appraises real estate for others and for compensation.]

[(g) Real estate licensure is not required for one to estimate the cost of repairing or replacing damaged portions of real property.]

[(h) The selling or appraising of household items or antiques is not activity requiring licensure under the Real Estate License Act.]

[(i) A Texas real estate broker's license entitles one to appraise real estate in Texas for another person and for compensation.]

(c) [(j)] Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must [shall] be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed. A real estate licensee may[, for a separate fee,] provide an opinion of value or comparative market analysis which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, if the licensee provides the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS AN OPINION OF VALUE OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(d) [(k)] The statement required by subsection (c) [(j)] of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

(e) [(l)] The exception allowed by subsection (c) [(j)] of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

§535.20. Procuring Prospects.

(a) This section prohibits a person not licensed as a Texas real estate broker or salesperson from receiving a [referral] fee ,including but not limited to rent bonuses, discounts, gifts or other things of value from another person for a referral of a prospective buyer, seller, landlord or tenant concerning the sale, exchange, purchase, rental or lease of real estate.

[(b) Real estate licensure is required for one to procure or assist in the procuring of prospective tenants of real property for compensation in any form, including but not limited to rent bonuses, discounts, gifts, or other things of value.]

[(c) The referral of a prospective purchaser, for compensation, is an act requiring real estate licensure.]

(b) [(d)] A person is not required to be licensed as a real estate broker or salesperson if all of the following conditions are met.

(1) The person is engaged in the business of selling goods or services to the public.

(2) The person sells goods or services to a real estate licensee who intends to offer the goods or services as an inducement to potential buyers, sellers, landlords or tenants.

(3) After selling the goods or services to the real estate licensee, the person refers the person's customers to the real estate licensee.

(4) The payment to the person for the goods or services is not contingent upon the consumption of a real estate transaction by the person's customers.

§535.21. Unimproved Lot Sales; Listing Publications.

(a) A person must be licensed as a real estate broker or salesperson to [Real estate licensure is required of those who] advertise for others regarding real property, accept calls received in response to such advertisements, and refer the callers to the owner of the property.

[(b) Real estate licensure is required to authorize a marketing company or its employees to act as the real estate agent for another entity.]

(b) [(c)] A person may contract to advertise real estate for purchase, sale, lease or rental in a publication without being licensed under Texas Civil Statutes, Article 6573a, (the Act), unless payment of any fee or consideration the person receives is contingent upon the purchase, sale, lease, or rental of the property advertised in the publication. For the purposes of this section an advance fee is a contingent fee if the person is obligated to return the fee if the property is not purchased, sold, leased or rented. This [The] section shall be narrowly construed to effectuate the purposes for which this section was adopted.

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902230
Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465–3900

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Subchapter C. Exemptions to Requirements of Licensure

22 TAC §§535.31-535.35

The Texas Real Estate Commission (TREC) proposes amendments to §535.31, concerning exempt attorneys at law, §535.32, concerning exempt attorneys in fact, §535.33, concerning exempt public officials, §535.34, concerning exempt salespersons employed by an owner, and §535.35, concerning exempt employees renting or leasing their employer's real estate. The amendments would generally shorten the sections by eliminating unnecessary provisions and combining other provisions. These changes are proposed in connection with TREC's pending review of its rules in Chapter 535 of the Texas Administrative Code. Adoption of the amendments would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

The amendment to §535.31 would restate the exemption for licensed attorneys and combine several subsections to make the section easier to read. Provisions relating to the attorney's client and non-client relationships, State Bar of Texas rules and membership in trade associations would be deleted as unnecessary. The amendment to §535.32 would make nonsubstantive changes to make the section concerning the exemption for attorneys-in-fact easier to read. The amendment to §535.33 would restate the exemption for public officials and delete subsections which merely provide examples of public officials exempt from the requirement of holding a license or registration issued by TREC. The amendment to §535.34 would delete unnecessary provisions which merely provide examples of relationships between a builder and other persons who are not entitled to claim an exemption from licensing requirements. The amendment to §535.35 would make nonsubstantive changes and delete a subsection that merely repeats the statutory exemption for employees renting or leasing their employer's real estate.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in the number of TREC rules and greater ease in reading the remaining rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

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

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

§535.31. Attorneys at Law.

[(a)] A licensed attorney is [Licensed attorneys are] exempt from the requirements of Texas Civil Statutes, Article 6573a, (the Act) [the Real Estate License Act] but cannot sponsor real estate salespersons [for licensure] or serve as the designated officer or manager of a licensed corporation or limited liability company unless the attorney is [such attorneys are] also licensed as a real estate broker [brokers].This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

[(b) Licensed attorneys are exempt from the requirements of The Real Estate License Act, but they are not eligible to qualify as designated agents for a corporation which is licensed as a broker unless such attorneys are otherwise qualified in accordance with the requirements of the Act.]

[(c) Attorneys who desire real estate licensure must follow the same steps which would be necessary if they were not attorneys.]

[(d) A Texas-licensed attorney is exempted from real estate licensure requirements whether dealing with clients or with non-clients.]

[(e) An attorney should make his or her own determination regarding whether acting as a real estate agent on the basis of a law license may violate the State Bar's Code of Professional Responsibility.]

[(f) This provision is not a waiver of the standards of eligibility and qualification elsewhere established in this Act. Law school credits may fulfill educational requirements.]

[(g) This Act does not govern an attorney's eligibility for trade association or organization membership. Whether an attorney who is not licensed as a real estate broker is eligible for such membership would be determined by the association's or organization's requirements or restrictions.]

§535.32. Attorneys in Fact.

A person holding a [A] power of attorney which is recorded in the county in which the particular real property is located and which specifically describes the real property to be sold may [authorizes a person to] act as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the [necessity of real estate licensure. An unlicensed] person does not [cannot] use powers of attorney [the power of attorney method] to engage in the real estate agency business.

§535.33. Public Officials.

[(a)] Public officials and employees of governmental or quasi-governmental units are exempted from the requirement of being licensed as a real estate broker or salesperson [licensure] while performing their official duties [as such].

[(b) A person may serve on a tax equalization board for a city or a school district for compensation without being required to have a real estate license.]

[(c) One appraising property for the county under an order of the county commissioner's court is exempted under this section.]

[(d) An organization or its employee which makes surveys for various taxing authorities for the purpose of establishing tax values would be considered an arm of the taxing authority and exempted under this section.]

[(e) Licensure is not required of one employed by a governmental unit to evaluate property for tax purposes.]

[(f) A salesperson making appraisals for the Veterans Administration must do so through the salesperson's sponsoring broker.]

§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner.

[(a)] "Salesperson employed by an owner" means a person employed and directly compensated by an owner.

[(b) "Salesperson employed by an owner" does not include:]

[(1) a real estate licensee who lists, orally or in writing, an owner's property for sale;]

[(2) any person employed by, associated with, cooperating with, or sponsored by a real estate licensee who lists, orally or in writing, an owner's property for sale; or]

[(3) any person who, having no pre-existing employment or listing agreement with an owner, sells or attempts to sell an owner's property.]

§535.35. Employees Renting and Leasing Employer's Real Estate.

[(a)] Withholding [An owner-employer's act of withholding] income and F.I.C.A. taxes from wages paid another person is considered [would be] evidence of employment.

[(b) Employees of an owner of real property may negotiate with respect to renting or leasing the owner's properties without obtaining real estate licensure.]

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

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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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Subchapter D. The Commission

22 TAC §535.41, §535.42

The Texas Real Estate Commission (TREC) proposes amendments to §535.41, concerning procedures for meetings of the members of the commission, and §535.42, concerning TREC's jurisdiction and authority. The amendment to §535.41 would make nonsubstantive changes to make the section easier to read and consistent in style with TREC's other rules. The amendment to §535.42 would delete unnecessary language, combine provisions and clarify the authority of the staff administrative law judge to order issuance of a probationary license. Adoption of the amendments would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the elimination of unnecessary rules and clarification of the authority of the TREC staff. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate

Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

§535.41. Procedures.

(a) Meetings.

(1) (No change.)

(2) Meetings will [~~shall~~] be held at such places as the commission deems proper.

(3) Meetings must [~~shall~~] be called by the chairperson on the chairperson's own motion or upon the written request of five members.

(b) Quorum. Five members constitute [~~shall constitute~~] a quorum.

(c) Officers.

(1) Officers of the commission [~~shall~~] consist of a chairperson, vice-chairperson and secretary.

(2) (No change.)

(d) Order of business.

(1) With the exception of proceedings in contested cases, meetings must [~~shall~~] be conducted in accordance with Roberts Rule of Order.

(2) Proceedings in contested cases will [~~shall~~] be conducted in accordance with the Administrative Procedure Act, Texas Government Code, §§2001.001 et seq and Chapter 533 of this title (relating to Practice and Procedure).

§535.42. Jurisdiction and Authority.

(a) [~~The commission can advise with reference to the laws it administers but questions regarding other laws should be directed to the appropriate agency or to a private attorney.~~]

[~~(b) The Real Estate License Act does not require the registration of subdivisions offered for sale or other disposition within Texas.~~]

[~~(c)~~] The commission does not mediate disputes between or among licensees concerning entitlement to sales commissions or recommend individual licensees to the public.

[~~(d) The commission does not recommend individual licensees to the public.~~]

(b) [~~(e)~~] An employee of the commission specifically authorized by it pursuant to Texas Civil Statutes, Article 6573a, (the Act) [~~the Act~~], §5(t), to conduct hearings and render final decisions in contested cases may order issuance of a probationary license under §535.94 of this title (relating to Hearing on Application Disapproval: Probationary Licenses) and may suspend or revoke a license or reprimand or place on probation a licensee for a violation of the Act or a rule of the commission.

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

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Mark A. Moseley
General Counsel
Texas Real Estate Commission

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Subchapter E. Requirements for Licensure

22 TAC §§535.51-535.53

The Texas Real Estate Commission (TREC) proposes amendments to §535.51, concerning general requirements for a real estate license, §535.52, concerning individual applicants, and §535.53, concerning applications by corporations and limited liability companies. The amendments would revise the sections to reflect more accurately the procedures TREC follows in processing applications, and shorten the sections by combining their provisions. Nonsubstantive changes also would make the sections easier to read. These changes are proposed in connection with TREC's pending review of its rules in Chapter 535 of the Texas Administrative Code. Adoption of the amendments would continue the process of reducing the volume of TREC's rules wherever possible and making the rules easier for the public to use.

The amendment to §535.51 would clarify that applicants must file the application for a license on the form adopted by the commission for that purpose and that applications will be returned to the applicant if requisite education or experience requirements have not been satisfied. The amendment to §535.52 generally restates TREC's statutory authority to disapprove an application at any time prior to the issuance of a license if the applicant fails to satisfy TREC as to the person's honesty, trustworthiness and integrity. The amendment to §535.53 combines and shortens the provisions relating to the licensing of corporations and limited liability companies. A provision relating to the authority of an unlicensed corporate officer would be deleted in §535.53, because that subject is being addressed in a proposed amendment to §535.13.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the licensing process for applicants. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

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

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

§535.51. General Requirements.

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the

commission for that purpose. [~~Only a licensed broker may apply as sponsoring broker for licensure of a real estate salesperson.~~]

(b) The commission shall return applications [~~Applications are returned~~] to applicants or the sponsoring broker (in the case of an application for an active salesperson license) when it has been determined that the application [~~is not acceptable because, on its face, it~~] fails to comply with one of the following requirements[~~, based upon The Real Estate License Act, §6 and §7~~].

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

(6) education or experience requirements have not been satisfied [~~on broker applications, any requisite active experience or education is not established~~].

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

§535.52. Individuals.

(a) The commission may disapprove an application if the applicant fails to satisfy the commission [~~Civil judgments, criminal convictions or bankruptcy proceedings would not in themselves bar an applicant from obtaining real estate licensure, although the facts on which such legal action was based may cause disapproval of the application if the circumstances fail to satisfy the commission~~] as to the honesty, trustworthiness, or integrity of the applicant.

(b) (No change.)

(c) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license [~~licensure~~].

[~~(d) The requirement that the Commission be satisfied as to the honesty, trustworthiness and integrity of the applicant will not necessarily be considered until all other requirements have been met, including the passing of the examination.~~]

§535.53. Corporations and Limited Liability Companies.

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one person holding an active Texas real estate broker license to act for it. The corporation or limited liability company may not act as a broker during any period in which it has not designated a person to act for it who meets the requirements of Texas Civil Statutes, Article 6573a (the Act). A broker may not act as a designated person at any time while the broker's license is inactive, expired, suspended or revoked. [~~An individual must hold an active Texas real estate broker license to act as the designated person for a corporation or limited liability company licensed as a Texas real estate broker.~~]

[~~(b) There is only one designated person for each broker license issued to a corporation or limited liability company.~~]

(b) [~~(c)~~] Section 6 of the Act [~~This section~~] applies only to corporations or limited liability companies which are created under the laws of this state, provided, however, that a corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.

[~~(d) An individual who is an officer of a corporation or the manager of a limited liability company and is acting in behalf of the corporation or limited liability company is not required to have a license in order to sell real estate owned by the corporation or limited liability company, provided the individual receives no special compensation therefor.~~]

[~~(e) If a corporation or limited liability company is to be licensed, one of its officers or managers must be licensed as an active Texas real estate broker.~~]

[~~(f) A corporation or limited liability company formed under the laws of a state other than Texas may be accepted as a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.~~]

[~~(g) An individual whose real estate broker license has been suspended or revoked may not, during the period of such suspension or revocation, act as the designated person for a corporation or limited liability company licensed as a real estate broker.~~]

[~~(h) A corporation or limited liability company licensed as a real estate broker must designate another of its officers to act for it during any period of time in which its designated person ceases to be an officer or manager of the corporation or limited liability company or in which the individual real estate broker license of its designated person has been suspended or revoked. A corporation or limited liability company is not authorized to exercise its licensure privileges until another of its officers or managers has been designated to act for it during any such period.~~]

[~~(i) A corporation or limited liability company may not renew its license unless the person designated by it is licensed as an active Texas real estate broker.~~]

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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter A. Ethical Standards

22 TAC §663.2

The Texas Board of Professional Land Surveying proposes an amendment to §663.2, concerning Intent.

In subsection (a), a new paragraph (3) is added for clarification.

Sandy Smith, 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.

Ms. Smith also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the existing rule. There will be no effect on small businesses. There is

no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§663.2. Intent.

(a) The intent of the sections in this chapter shall be:

(1) to create standards of responsibility as guidelines for the profession; and

(2) to create rules of conduct for governance of the profession ; and [.]

(3) to provide technical standards governing land boundary surveying.

(b) The rules shall be binding on all registrants, but nothing contained therein shall be construed to supersede the statutory law of the state.

(c) The board shall determine what acts constitute gross negligence, incompetency, misconduct, and violation of the rules and shall institute appropriate disciplinary action which may lead to reprimand, suspension, or revocation of the certificate of registration or certificate of licensure.

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

Filed with the Office of the Secretary of State, on April 19, 1999.

TRD-9902244
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 452–9427

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Subchapter B. Professional and Technical Standards

22 TAC §663.21

The Texas Board of Professional Land Surveying proposes new §663.21, concerning Descriptions Prepared for Political Subdivisions.

Section 663.21 is proposed to provide the public with a better, more informative, surveying product. The minimum conditions require descriptions to be unambiguous and locatable on the ground.

Section 663.21 was previously proposed in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1899). The board received three comments recommending additional clarification. Two commenters had concerns regarding the use of record information and one was in favor. The rule was amended as a result of the comments received. The March 19, 1999, proposal of §663.21 is withdrawn elsewhere in this issue of the *Texas Register*.

Sandy Smith, 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.

Ms. Smith also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a better, more informative, surveying product. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The new section is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§663.21. Descriptions Prepared for Political Subdivisions. A registrant or licensee may prepare, sign, and seal a metes and bounds description from public land title records upon satisfying all of the following minimum conditions:

(1) The description is prepared for a political subdivision of the State (which is defined as a county, city, district, or other body politic of the State having a jurisdiction over only a portion of the State) for the sole purpose of defining or modifying the boundaries of the political subdivision.

(2) The description must be unambiguous and locatable on the ground by ordinary surveying procedures;

(3) Any record monument or physical monumentation called for in the description must be in place at the time the surveyor prepares the description and the surveyor must have personal knowledge of such monument sufficient to give a proper current description for the monument and its accessories;

(4) The surveyor signing the work must have performed an on the ground survey to support any course and distance recited in the description, except that the description may quote courses and distances from recorded documents (such as deeds) as long as the recording reference for any recited document is also quoted in the description; and

(5) Any survey document prepared under this rule shall bear a note as follows: "This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

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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Sandy Smith
Executive Director
Texas Board of Professional Land Surveying

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 53. Finance

Subchapter E. Selling Price of Departmental Information

31 TAC §53.35

Texas Parks and Wildlife proposed amendment to §53.35 of its administrative rules concerning release of customer information sets out the Department policy for reduced rates for nonprofit organizations and other small requests for customer information.

Melanie Callahan, Finance Director, has determined that for each of the first five years that the proposed section is in effect, there will be no negative financial implication to state or local governments as a result of enforcing or administering the proposed section.

Ms. Callahan also has determined that for each of the first five years the proposed section is in effect, the public benefit anticipated as a result of the amended rules as proposed will be increased satisfaction with the consistency and fairness of department customer-list-release rules.

There will be no effect on small businesses. There is no economic costs to persons required to comply with the new amended rules as proposed because the rules allow for reduced rates for obtaining customer lists.

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

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

Comments on the proposed rules may be submitted to Judy Doran, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4329, or 1-800-792-1112 or by fax (512) 389-4482.

The proposed rule is authorized by, Texas Parks and Wildlife Code, §11.030, which requires the commission to adopt by rule the policies for the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

The proposed rule affects Parks and Wildlife Code, Chapter 11.

§53.35. Release and Sale of Customer Information.

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

(d) The department may release customer information, except personal information, without charge or at a reduced fee when the executive director deems that release of such information is in the best interest of the state; and [.]

(1) A non profit group or organization which is specifically organized to promote the statewide goals and missions of Texas Parks and Wildlife Department, upon approval of its request, can obtain the lists at the Department's cost. The release of the list will be for a one-time use only and any mailing using the lists must be reviewed and approved by the Department before the data is released;

(2) A nonprofit group or organization that is not specifically organized to promote the statewide goals and missions of Texas Parks and Wildlife Department but that has stated goals which benefit the Department, upon approval of its request, can obtain the list at one-half of the market price. The release of the list will be for a one-time use only and any mailings must be reviewed and approved by the Department before the data is released;

(3) Texas Parks and Wildlife Department will treat citizens' requests for information on individuals, businesses and other entities who have received a license or permit from the Department as Public Information requests and furnish the names and addresses for the Department's cost if the request is for a small number of names and if disclosure of names and addresses requested is not otherwise prohibited by law. Should the Requestor ask for a large number of such names, the market price will be charged. A request for customer names and addresses for publishing on the INTERNET or other widely distributed media will not be honored if the request is for a large number of names and the Department will not honor requests for customer lists to be published on the INTERNET or other widely distribute media for purposes that are contrary to our goals and mission or are otherwise not in the best interest of the state.

(4) Requests for TPW lists for research purposes only will be furnished to the Requestor at cost or with costs waived; provided the Requestor agrees in writing to furnish TPW the methodology, all data and conclusions resulting from use of the list(s).

(e)-(f) (No change.)

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

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902254
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 389-4775

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Chapter 57. Fisheries

Subchapter E. Permits to Sell Nongame Fish Taken From Public Freshwater

31 TAC §57.381, §57.382

The Texas Parks and Wildlife Department proposes amendments to §§57.381-57.382 concerning Permits to Sell Nongame Fish. The proposed changes are intended to simplify the permitting and reporting procedures.

Proposed amendments to §57.381 will require that all permits expire on December 31st of the year issued, while amendments

to section §57.382 will require annual reports to be submitted to the department by the 10th day of December, and require monthly reports to be maintained at the permittee's address for one year.

Mr. Joedy Gray, Inland Fisheries Division, has determined that for each of the first five years that the proposed sections are in effect, there will be no negative financial implication to state or local governments as a result of enforcing or administering the proposed sections.

Mr. Gray also has determined that for each of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be increased vendor participation and satisfaction with the consistency and fairness of department purchasing rules.

There will be no effect on small businesses. There is no additional economic costs to persons required to comply with the rules as proposed because such rules in similar have been in effect at General Services Commission for some time. The Commission handles the bulk of state purchasing.

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

Comments on the proposed rules may be submitted to Joedy Gray, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8037 or 1-800-792-1112.

The sections are proposed under Parks and Wildlife Code, §67.0041 which provides statutory authority to the Commission to regulate the sale of nongame fish taken from public waters.

The rules as proposed affect Parks and Wildlife Code, § 67.0041.

§57.381. Permit Specifications and Requirements.

(a) A permit issued by the department to sell nongame fish taken from public fresh water shall specify:

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

~~[(6) the period of time the permit is valid.]~~

(b)-(g) (No change.)

(h) All permits issued under these rules expire on December 31 of the year issued.

§57.382. Harvest and Sales Reports.

Annual [~~Monthly~~] harvest and sales reports must be submitted by the permittee to the department on forms provided by the department.

(1) Annual [~~Harvest and sales~~] reports must be received by the department on or before the 10th day of December each year [~~each month during the period of the permit's validity~~].

~~[(2) Reports must be submitted for months in which no permitted activity occurred.]~~

(2) [~~(3)~~] Reports must include for each species taken:

(A) species name;

(B) number of individuals;

(C) number of pounds;

(D) means and methods used to take each species;

(E) water body from which each species was taken; and

(F) price received, per pound, of each species sold.

~~[(4) A permittee's failure to submit three consecutive reports will initiate proceedings for permit revocation.]~~

(3) [~~(5)~~] Permittee must maintain sales receipts for all nongame fish sold for a period of one year from date of sale, and these receipts must be available for examination by authorized employees of the department.

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

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902256
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 389-4775

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Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 2. Open Seasons and Bag Limits–Hunting Provisions

31 TAC §65.64

The Texas Parks and Wildlife Department proposes an amendment to §65.64, concerning Turkey. The amendment is necessary to advance the commission's policy to providing the greatest hunter opportunity possible within the tenets of sound biological management. The department's stocking operations in the eastern third of the state have made it biologically feasible to allow the hunting of Eastern wild turkey in certain counties, as well as to permit the take of turkeys by means of lawful archery equipment and crossbows. The amendment will function by: opening a season for the hunting of Eastern wild turkey in seven East Texas counties; and allowing turkeys to be taken by any lawful means except firearms other than shotgun.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the amendment is in effect, there will be no negative fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be increased recreational hunting opportunity in this state.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the rule as proposed.

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

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

Comments on the proposed rule may be submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4774 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendment affects Parks and Wildlife Code, Chapter 61.

§65.64. Turkey.

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

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Cass, Cherokee, Delta, Fannin, Grayson, Gregg, Harrison, Hopkins, Jasper, Lamar, Marion, Montgomery (north of State Hwy. 105), Nacogdoches, Newton, Polk, Red River, Sabine, San Augustine, San Jacinto, [~~and~~] Trinity, Tyler (north of U.S. Hwy. 190), and Walker counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: the Monday nearest April 14 for 14 consecutive days.

(2) Bag limit (both species combined):one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbow;

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

(d) (No change.)

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

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902249
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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Subchapter N. Migratory Game Bird Proclamation

31 TAC §§65.315, 65.318-65.320

The Texas Parks and Wildlife Commission proposes amendments to §§65.315, 65.318, 65.319, and 65.320, concerning the Migratory Game Bird Proclamation. The amendment to §65.315 changes the season for mourning dove to create a 70-day season and a 12-bird daily bag limit; and adjusts the sandhill crane seasons to account for calendar shift. The amendments to §§65.318, 65.319, and 65.320 adjust the season dates for late-season species of migratory game birds, early-season falconry, and late-season falconry, respectively, to account for calendar-shift. The amendments are necessary to implement commission policy to provide maximum hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service (Service). The Service has not issued regulatory frameworks for the 1999-2000 hunting seasons for migratory game birds; however, the department intends to follow commission policy in adopting the most liberal provisions possible under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizenry.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

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

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

Comments on the proposed rules may submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64.

§65.315. Open Seasons and Bag and Possession Limits - Early Season.

(a) Rails.

(1) Dates: September 11-26, 1999 [~~12-27, 1998~~], and October 23 [~~24~~] - December 15, 1999 [~~16, 1998~~].

(2) (No change.)

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1- November 9, 1999 [~~October 30, 1998~~].

(B) Daily bag limit: 12 [~~15~~] mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 [~~30~~] mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1-October 24, 1999 [~~18, 1998~~], and December 26, 1999 [~~1998~~] -January 10, 2000 [~~6, 1999~~].

(B) Daily bag limit: 12 [~~15~~] mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 [~~30~~] mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 24 [~~25~~]-November 14, 1999 [~~8, 1998~~], and December 26, 1999 [~~1998~~]-January 12, 2000 [~~9, 1999~~]. In the special white-winged dove area, the mourning dove season is September 24 [~~25~~]-November 14, 1999 [~~8, 1998~~], and December 26, 1999 [~~1998~~]-January 8, 2000 [~~5, 1999~~].

(B) Daily bag limit: 12 [~~15~~] mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 [~~30~~] mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 4, 5, 11, and 12, 1999 [~~5, 6, 12, and 13, 1998~~].

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

(c) Gallinules.

(1) Dates: September 11-26, 1999 [~~12-27, 1998~~], and October 23, 1999 [~~24, 1998~~] - December 15, 1999 [~~16, 1998~~].

(2) (No change.)

(d) September teal-only season [~~Teal ducks~~].

(1) Dates: September 11-26, 1999 [~~12-27, 1998~~].

(2) (No change.)

(e)-(f) (No change.)

(g) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued. The daily bag limit is three. The possession limit is six.

(1) Zone A: November 13, 1999 [~~7, 1998~~]-February 13, 2000 [~~7, 1999~~].

(2) Zone B: December 4, 1999 [~~November 28, 1998~~]-February 13, 2000 [~~February 7, 1999~~].

(3) Zone C: January 8, 2000 [~~2, 1999~~]- February 13, 2000 [~~7, 1999~~].

(h) Woodcock: December 18, 1999 [~~1998~~]-January 31, 2000 [~~1999~~]. The daily bag limit is three. The possession limit is six.

(i) Common snipe (Wilson's snipe or jacksnipe): October 17, 1999 [~~1998~~]-January 31, 2000 [~~1999~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits - Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, one mottled duck, one pintail, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser.

(A) High Plains Mallard Management Unit: October 16-19, 1999 [~~17-20, 1998~~], and October 23, 1999 [~~24, 1998~~] - January 16, 2000 [~~17, 1999~~].

(B) North Zone: October 30 [~~31~~] - November 7, 1999 [~~8, 1998~~], and November 13, 1999 [~~14, 1998~~] - January 16, 2000 [~~17, 1999~~].

(C) South Zone: October 23 [~~24~~] - November 28, 1999 [~~29, 1998~~], and December 11, 1999 [~~12, 1998~~] - January 16, 2000 [~~17, 1999~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: October 30, 1999 [~~31, 1998~~] - February 13, 2000 [~~14, 1999~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 30, 1999 [~~31, 1998~~] - February 13, 2000 [~~14, 1999~~]. The daily bag limit for dark geese is five, which may not include more than four Canada geese and one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 30, 1999 [~~31, 1998~~] - February 13, 2000 [~~14, 1999~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 23, 1999 [~~24, 1998~~] - January 16, 2000 [~~17, 1999~~]. The daily bag limit for white-fronted geese is one.

(II) Canada geese and brant: October 30, 1999 [~~31, 1998~~] - January 30, 2000 [~~31, 1999~~]. The daily bag limit is one Canada goose or one brant, except during the period from January 17-30 [~~18-31~~], when the bag limit is two in the aggregate.

(3) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older. Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 9, 1999 [~~10, 1998~~];

(B) North Zone: October 23, 1999 [~~24, 1998~~]; and

(C) South Zone: October 16, 1999 [~~17, 1998~~].

§65.319. Extended Falconry Season - Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 [~~9~~] - December 25, 1999 [~~1998~~]; and

(2) rails and gallinules: December 16, 1999 [~~17, 1998~~] - January 21, 2000 [~~22, 1999~~].

(3) woodcock: November 24-December 17, 1999 [~~1998~~], and February 1-March 10, 2000 [~~1999~~].

(b) (No change.)

§65.320. Extended Falconry Season - Late Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons. Ducks, coots, and mergansers:

(1) High Plains Mallard Management Unit: no extended falconry season; and

(2) Remainder of the state: January 17 [~~18~~] - February 1, 2000 [~~2, 1999~~].

(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 April 19, 1999.

TRD-9902250
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XII. Texas Military Facilities Commission

Chapter 379. Administrative Rules

37 TAC §§379.1–379.3

The Texas Military Facilities Commission proposes new §§379.1-379.3, concerning Public Access. The new sections are being proposed due to Sunset across the board recommendations requiring the agency to develop rules for public access to the Commission. These sections were originally proposed and published in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11787). Due to a correction being made in the cross-reference to statute site, the November 20th proposed sections are being withdrawn elsewhere in this issue of the *Texas Register*.

Lydia Cruz, Director of Accounting and Administration, Texas Military Facilities Commission, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Cruz also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the development of new rules regarding public access. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Julie Wright, Texas Military Facilities Commission, P.O. Box 5426, Austin, Texas 78763-5426.

The new sections are proposed under the Government Code, §435.011, which provides the Texas Military Facilities Commission with the authority to promulgate rules.

The following section of the Government Code is affected by the proposed new rules: §435.015.

§379.1. Commission Information.

The Commission staff shall provide a mission statement and current list of the name, mailing address, and telephone number of the Commission to each facility under the jurisdiction of the Texas Military Facilities Commission. The information is provided for the purpose of directing complaints relating to building maintenance or agency performance to the Commission.

§379.2. Filing Complaints.

(a) The Commission staff shall provide to persons wishing to file a complaint the agency's policy and procedures regarding complaints.

(b) Complaints should be submitted directly to the Executive Director. The complaint shall be made in writing. The written statement shall include information identifying the nature of the complaint and setting forth specific facts and circumstances that require investigation, including any documentation and/or identification of relevant witnesses.

§379.3. Appeals.

Appeals should be submitted directly to the Commission Chairman. The complaint shall be made in writing. The written statement shall include information identifying the nature of the complaint and setting forth specific facts and circumstances that require investigation, including any documentation and/or identification of relevant witnesses.

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

Filed with the Office of the Secretary of State, on April 13, 1999.

TRD-9902171
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 406–6971

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter X. Requirements for Medicaid-Certified Facilities

40 TAC §19.2322, §19.2324

The Texas Department of Human Services (DHS) proposes amendments to §19.2322, concerning allocation, reallocation, and decertification requirements, and §19.2324, concerning selection and contracting procedures for adding beds in high-occupancy areas, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to make necessary corrections and changes to the rules adopted by the Texas Board of Human Services in April 1998. The moratorium rules comply with Senate Bill 190, passed by the 75th Legislature, by establishing procedures to control the number of Medicaid-certified nursing facility beds and the decertification and reallocation of unused Medicaid beds. These amendments add definitions for nursing facility operator, controlling person, and nursing facility chain to the current bed allocation rules. The current rule regarding the history of quality care test is expanded to add a new exception for instances where the applicant has no prior history. Another new portion of that test addresses cases of multiple ownership in which the department will take into consideration the overall record of the nursing facility chain. A new provision clarifies that an Alzheimer's facility requesting an increase in beds will be approved for an increase in Medicaid beds for Alzheimer purposes only. The history of quality care test is applied to facilities requesting "spenddown" beds. The current provision regarding the loss of bed allocation due to sanctions is amended to allow for a further ground for waiver of the provision. The rules are also clarified to the effect that facilities that voluntarily decertify beds must apply for beds under the same conditions as any other new applicant and that DHS may require written approval of the owner of the physical plant before approving any action that would affect the status of a facility's Medicaid beds.

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 has determined that for each year of the first five years these amendments are in effect the public benefit anticipated as a result of enforcing these amendments will be the more efficient and fair enforcement of the rule on the distribution, allocation, and reallocation of Medicaid beds. An additional public benefit will be that additional Medicaid-certified beds will be available in facilities providing a high quality of care. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no effect on small businesses, as unused Medicaid beds are not economically feasible to the nursing facility; however, fewer beds at the time of sale for a nursing facility could mean less property value. There is no anticipated economic cost to persons who are required to comply with the proposed sections. Despite the fact that the allocation of beds is in the exclusive discretion of the state and the state recognizes no property interest in the beds and although nursing facilities would not incur any additional costs to comply with the proposed rules, an argument could be made that Medicaid certification adds value to nursing facility beds through access to a larger pool of potential residents and the associated streams of revenue and potential profit. Consequently, according to this line of argument, amendments affecting decertification of beds might constitute a devaluation of those assets. This could cause a speculative "adverse economic effect" if that phrase is understood to mean an effect on the facility other than the cost of complying with the proposed rules.

A number of factors determine the market value of a nursing facility. For example, as real property, a nursing facility has value due to its location, the condition and potential uses of the building or buildings, and other factors. Bed decertification does not undermine value from this perspective, because it does not affect the physical assets and their ownership. More importantly in the present context, the market value of a nursing facility is also determined by the nature of the business as an ongoing enterprise generating present and future revenue and profit streams. For many homes where Medicaid residents are a large part of the census, Medicaid certification is a crucial factor in determining whether adequate revenue streams will be available to continue the operation. However, the rules decertify only a limited number of beds that have been chronically unoccupied. Thus, no change in the facility's revenues, costs or profits would occur, although the Medicaid certification of the decertified beds might add to the speculative value of a facility on sale, the loss in speculative value of unused beds would not undermine the value of individual nursing facilities, large or small.

A related argument could be made that decertification of beds would decrease the availability or increase the cost of credit to finance nursing facility purchases. Once again, it is hard to see how the limited decertification of unused beds generating no revenues and no profits would substantially after a lender's risk assessment of such a business entity.

The current rules also effect the manner in which facilities may apply for additional bed allocations. Applicant facilities are required to have demonstrated a history of quality care. The provisions relating to the history of quality care are altered by these amendments but the opportunity for additional bed allocations are, by definition, new opportunities or benefits and will thus not have an adverse impact.

The department has determined that these rules regarding bed allocations will not affect any real property interests. Accordingly, no takings impact assessment is required under §2007.043 of the Government Code and §2.19 of the Attorney General's Guidelines under the Private Real Property Rights Preservation Act. See 21 TexReg 387,390 (1996).

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-129, 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 amendments 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 amendments implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042, specifically §32.0213.

§19.2322. Allocation, Reallocation, and Decertification Requirements.

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

(1) Nursing Facility Operator (NFO) - The entity that is:

(A) an applicant for licensure by the Texas Department of Human Services (DHS) under Chapter 242 of the Texas Health and Safety Code and Medicaid certification;

(B) licensed by DHS; or

(C) licensed and holds the contract to provide Medicaid services. [~~The entity that holds the contract to provide Medicaid services and is licensed by the Texas Department of Human Services (DHS) under Chapter 242 of the Texas Health and Safety Code.~~]

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

(4) Controlling person - As defined in §242.0021 of the Texas Health and Safety Code.

(5) Nursing facility chain - An entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(b) Purpose. The purpose of these rules is to control the number of Medicaid beds for which DHS contracts. The allocation of certified beds represents an opportunity to contract to serve a specific number of residents. The Medicaid beds for which an NFO is certified are strictly limited to the physical plant at which they were originally certified, unless their transfer by the NFO in the county is expressly approved by DHS. The beds remain at the physical plant even if the bed allocation was obtained by or through the action of the NFO. When the NFO's business is sold, the allocation of certified beds remains at the physical address at which they were originally certified. Any transfer must meet the requirements contained in subsection (i) [~~(h)~~] of this section.

(c) (No change.)

(d) Quality of care.

(1) History of quality of care. For purposes of this section, an NFO demonstrates a history of quality care if, within the two years preceding a request for additional capacity:

(A) the NFO has not received any of the following sanctions:

(i) termination of Medicaid certification;

(ii) termination of Medicaid contract;

(iii) civil penalty pursuant to §242.065 of the Texas Health and Safety Code;

(iv) Medicaid monetary penalty;

(v) denial of payment for new admissions;

(vi) denial of facility's license; or

(vii) denial of new admissions, as described in §242.012 of the Texas Health and Safety Code; and

(B) DHS does not find a clear pattern of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions.

(2) Exceptions to history of quality of care.

(A) Regardless of any sanctions imposed in subsection (d)(1)(A) of this section. DHS may grant an application in a county with four or fewer facilities, where none of the facilities would meet all of the requirements in subsection (d) of this section for increased capacity, upon finding a clear pattern of decreasing numbers of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions on the part of the NFO.

(B) Subsection (d)(1)(A) of this section does not apply to sanctions that are administratively withdrawn or subsequently reversed upon administrative or judicial appeal.

(C) In the case of sanctions that are appealed, either administratively or judicially, an application to DHS for an allocation of Medicaid certified beds will be suspended until the appeal has been finally resolved.

(D) Subsection (d)(1) of this section will not apply if all the following are met:

(i) The applicant NFO has changed ownership within that period;

(ii) The new owner of the NFO has demonstrated a history of quality care in that nursing facility for at least one year preceding the application for increased capacity; and

(iii) The new owner of the NFO has demonstrated to DHS's satisfaction a record of compliance in other nursing facilities it owns or operates.

(E) In instances where the NFO, waiver applicant, or other entity has no history of providing care, as outlined in subsection (d)(1) of this section, DHS will review the overall record of other facilities that the controlling person or persons owns, operates, or controls in order to determine the ability to provide quality care.

(3) Multiple ownership. Where an NFO, waiver applicant, or other entity to which subsection (d) applies is owned, operated under lease or otherwise controlled by nursing facility chain DHS will:

(A) apply the criteria as outlined in subsection (d)(A) of this section to the facility at issue; and

(B) examine the overall record of the nursing facility chain in order to determine the ability to provide quality care.

(e) [~~(d)~~] Exemptions. If the NFO meets all criteria, DHS may grant the following exemptions from the policy stated in subsection (c) of this section.

(1) NFOs that change ownership. Except as otherwise provided in this section, DHS limits contracting with the new owner to no more certified Medicaid beds than the prior owner had when the ownership change occurred.

(2) NFOs whose Medicaid contracts have been terminated. DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of termination. The NFO must meet certification and contract requirements within 90 days of the effective date of the termination in order to retain the allocation of Medicaid beds. The loss of the bed allocation after 90 days is dependant upon the NFO having failed two surveys within that period, so long as these surveys were requested within sufficient time for DHS [~~the department~~] to complete them within 90 days, consistent with federal requirements. Until an NFO has qualified to re-enter the Medicaid program, the allocation of beds to that facility is suspended and any sale of either the NFO or the physical plant will not transfer

or convey the bed allocation to a buyer. However, DHS [~~the department~~] may make an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of the facility or for other good cause.

(3) Replacement beds. DHS limits contracting of the replacement beds to the county in which the original physical plant was located and to no more than the number of certified Medicaid beds being replaced. The replacement beds must be recertified in the replacement physical plant within 24 months from the date of the DHS letter of approval to transfer beds. Potential NFOs previously issued waivers have 18 months from the effective date of this rule to be licensed and certified. DHS may grant an extension for extenuating circumstances, at the discretion of the DHS commissioner.

(4) Low capacity. For reasons of efficiency, DHS will accept an application to contract up to 60 beds from a small facility of less than 60 licensed beds if the NFO:

(A) has a Medicaid contract to provide nursing facility services; and

(B) has not had remedies imposed, as specified in subsection (d) [~~(g)(4)~~] of this section, which have resulted in contract cancellation in the 24-month period immediately preceding the month of application.

(5) Teaching facilities. Facilities approved and contracted to operate as teaching nursing facilities from March 1, 1989, through January 1, 1993, must continue to meet their affiliation agreements.

(6) Special commissioner's waiver.

(A) The commissioner of DHS has authority to waive the restriction on contracting in subsection (c) of this section and direct DHS to enter into Medicaid contracts with NFOs that satisfy the requirements specified in this subparagraph. In a manner acceptable to DHS, each of these NFOs must:

(i) document that there is a crisis and immediate need for additional Medicaid nursing-facility beds in the NFO's community;

(ii) document that there are problems with the quality of care available in the NFO's community, and show that new Medicaid beds will remedy these problems;

(iii) demonstrate that Medicaid residents in their community do not have reasonable access to quality nursing facility care;

(iv) document strong community support for a new Medicaid nursing facility; and

(v) demonstrate a history of quality care, as specified in subsection (d) [~~(g)(4)~~] of this section. An applicant that has not owned or operated a nursing facility may apply; however, DHS will evaluate the applicant and any controlling person [~~as defined in Texas Health and Safety Code §242.0021,~~] to determine if the applicant has the capacity to provide quality care.

(B) DHS applies the following criteria when granting special DHS commissioner's waivers:

(i) If the physical plant has not completed construction requirements, and if the NFO has not been licensed and certified within 24 months of the date on the DHS letter approving the waiver, the DHS commissioner will rescind the approvals for all such waivers granted.

(ii) DHS may grant an extension for extenuating circumstances, at the discretion of the DHS commissioner.

(7) Criminal justice and underserved minorities. The commissioner may grant a waiver of these restrictions for a contract if the commissioner determines that beds are necessary for the following circumstances:

(A) to meet the need identified and determined by the Texas Department of Criminal Justice (TDCJ) as necessary to serve persons under the supervision of TDCJ who have been released on parole, mandatory supervision, or special needs parole under the Code of Criminal Procedure, Article 42.18; or

(B) to meet the documented demand in underserved minority communities where beds are not available from existing resources. For purposes of this waiver, the term minority shall mean all persons who are black, hispanic, Asian or Pacific islander, American Indian, or Alaskan native. The facility must:

(i) be located in a county with a total population of at least 1,000,000, according to the most recent [~~1990~~] U.S. census;

(ii) serve a zip code whose minority population is greater than 50%, according to the most recent [~~1990~~] U.S. census;

(iii) document that minority residents in the zip code in which the facility is located are unable to attain Medicaid long term care services in that specific location, due to lack of such service availability; and

(iv) be the only waived facility, as defined in this paragraph, in that county.

(C) NFOs granted waivers must be licensed and certified within 24 months of the approval letter.

(D) Potential NFOs previously issued waivers have 18 months from the effective date of this rule to be licensed and certified.

(8) Alzheimer's facilities. An Alzheimer's facility, established under this waiver that seeks to increase its Medicaid bed allocation will receive an increase of Medicaid beds as Alzheimer beds only. DHS waives a restriction imposed by state law on the authority to contract under the state Medicaid program for nursing home beds based on the percentage of beds that are occupied in a geographical area if the NFO:

(A) is affiliated with a medical school operated by the state;

(B) is participating in research programs for the care and treatment of persons with Alzheimer's disease;

(C) is designed to separate and treat Alzheimer's disease by stage and functional level; and

(D) documents to DHS the need for the specific number of beds requested.

(9) Medicaid eligible residents for whom no Medicaid bed is available. Facilities may obtain certified beds to serve residents by meeting the following criteria:

(A) The resident must:

(i) have been a resident of the nursing facility for at least six consecutive months before becoming eligible for Medicaid; and

(ii) not have been eligible for Medicaid at the time of admission to the nursing facility.

(B) The NFO must:

(i) request certification of currently non-certified Medicaid beds;

(ii) meet requirements for Medicaid participation;

(iii) obtain a Medicaid contract; and

(iv) have demonstrated to DHS a satisfactory [~~compliance~~] history of quality of care as specified in subsection (d) of this section.

(C) The certification of the bed is in effect until the resident's death or permanent discharge from the nursing facility or a Medicaid bed in the nursing facility becomes available.

(D) The number of Medicaid-certified beds under this paragraph may not exceed 10% of the total number of licensed beds in the nursing facility at any one time.

(f) [~~(e)~~] Loss of allocation due to sanctions. An NFO whose license has been denied or revoked loses the allocation of certified beds on the effective date of the denial or revocation and may not contract with DHS at the physical plant for which those beds were allocated. No beds are transferred to the buyer when an NFO whose license has been revoked or denied is sold. If the owner of the physical plant also operates the facility, the denial of the license will result in the loss of the owner's bed allocation at that facility. If the owner of the physical plant leases to an NFO, the owner will lose the allocation of beds when, within any 42-month period, one or more NFOs has two of any of the following: license denials, license revocations, or contract terminations. However, DHS may make an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility or to ensure access to quality care in the community.

(g) [~~(f)~~] Decertification of unused beds.

(1) Six months after the effective date of the adopted rule, an NFO with an average occupancy rate for the preceding six months of less than 70% will have a specific number of its beds decertified. The number of beds to be decertified will be calculated by subtracting the preceding six-month average occupancy rate of Medicaid certified beds in the facility from 70% of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example: for a facility with 100 Medicaid-certified beds and a 50% occupancy rate, the difference between 70% (70 beds) and 50% (50 beds) is 20 beds, divided by 2, equals 10 beds to be decertified.

(2) NFO occupancy rates may be reviewed annually and if the average occupancy rate is below 70% for the previous six months, the decertification process will occur.

(3) Medicaid-certified beds in new or replacement physical plants and newly constructed wings in existing physical plants will be exempt from this decertification process until they have been certified for two years.

(4) Facilities that have had beds decertified under this subsection are also eligible to receive an increased allocation of certified beds if the requirements in subsection (d) [~~(g)(4)~~] of this section are met.

(5) Facilities that voluntarily decertify existing Medicaid beds must apply for Medicaid beds under the same conditions as any other new applicant for licensure and certification.

(h) [~~(g)~~] Reallocations. NFOs that wish to increase the number of allocated certified beds must meet the following criteria.

(1) A Medicaid-certified NFO must have an average occupancy rate of 90% of the current number of its certified beds for nine out of the previous 12 months. The request for additional beds must be no greater than 10% of the current number of certified beds in a nursing facility;

(2) An [~~A non-certified~~] NFO's request for Medicaid-certified beds must be no greater than 10% of the current number of its licensed beds.

(3) NFOs may reapply for additional Medicaid-certified beds, having met the requirements in paragraphs (1) or (2) of this subsection, no sooner than nine months from the date of the prior allocation.

(4) To qualify for increased bed capacity the NFOs must, in addition to meeting the criteria in paragraph (1) or (2) of this subsection, demonstrate a history of quality care, as defined in subsection (d) of this section.

[~~(A) History of quality of care. For purposes of this section, an NFO demonstrates a history of quality care if, within the two years preceding a request for additional capacity:~~]

~~*[(i)* the NFO has not received any of the following sanctions:]~~

~~*[(I)* termination of Medicaid certification;]~~

~~*[(II)* termination of Medicaid contract;]~~

~~*[(III)* civil penalty pursuant to §242.065 of the Texas Health Safety Code;]~~

~~*[(IV)* Medicaid monetary penalty;]~~

~~*[(V)* denial of payment for new admissions;]~~

~~*[(VI)* denial of facility's license; or]~~

~~*[(VII)* denial of new admissions, as described in §242.012 of the Texas Health and Safety Code; and]~~

~~*[(ii)* DHS does not find a clear pattern of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions.]~~

~~[(B) Exceptions to history of quality of care.]~~

~~*[(i)* Regardless of any sanctions imposed in subparagraph (A) of this paragraph, DHS may grant an application in a county with four or fewer facilities, where none of the facilities would meet all of the requirements in subparagraph (A) of this paragraph for increased capacity, upon finding a clear pattern of decreasing numbers of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions on the part of the NFO.]~~

~~*[(ii)* Subparagraph (A)(i)-(ii) of this paragraph does not apply to sanctions that are administratively withdrawn or subsequently reversed upon administrative or judicial appeal.]~~

~~*[(iii)* In the case of sanctions that are appealed, either administratively or judicially, an application to DHS for an allocation of Medicaid-certified beds will be suspended until the appeal has been finally resolved.]~~

~~*[(iv)* Subparagraph (A)(i)-(ii) of this paragraph will not apply if all the following are met:]~~

~~*[(I)* The applicant NFO has changed ownership within that period;]~~

~~*[(II)* The new owner of the NFO has demonstrated a history of quality care in that nursing facility for at least one year preceding the application for increased capacity; and]~~

~~*[(III)* The new owner of the NFO has demonstrated to DHS's satisfaction a record of compliance in other nursing facilities it owns or operates.]~~

(i) [~~(h)~~] Transfer of allocation of Medicaid beds within a county. Subject to approval by DHS, the NFO has the opportunity to contract for Medicaid-certified beds under the following conditions:

(1) Certified Medicaid beds may be transferred within a county if the owners of the physical plants involved approve the transfer in writing. [~~However, if the same entity owns all the physical plants involved, written approval of the transfer is not required.~~]

(2) DHS must expressly approve the transfer specified in paragraph (1) of this subsection. To have a transfer approved, the physical plant owners and NFOs involved in the transaction must establish a history of quality of care as defined in subsection (d) [~~(g)(4)~~] of this section.

(j) DHS may require written approval of the owner of the physical plant before approving any action that would affect the status of the Medicaid beds.

§19.2324. Selection and Contracting Procedures for Adding Beds in High-Occupancy Areas.

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

(1) Nursing Facility Operator (NFO) - The entity that is:

(A) an applicant for licensure by DHS, under Chapter 242 of the Texas Health and Safety Code, and Medicaid-certification;

(B) licensed by the Texas Department of Human Services (DHS); or

(C) licensed and holds the contract to provide Medicaid services. [~~The entity that holds the contract to provide Medicaid services and is licensed by the Texas Department of Human Services (DHS) under Chapter 242 of the Texas Health and Safety Code.~~]

(2)-(6) (No change.)

(b) Primary selection process - conversion of existing licensed beds. When DHS determines that the occupancy rate in a county exceeds the threshold during any six- month period, DHS places a public notice in the *Texas Register* to announce an open solicitation period.

(1) (No change.)

(2) Potential contractors seeking to contract in an area identified in the public notice must demonstrate a history of quality of care, as specified in §19.2322(d) [~~(g)(4)~~] of this title (relating to Allocation, Reallocation, and Decertification Requirements), and must make written reply to the public notice. The reply must be received by Long Term Care-Regulatory, Mail Code E-342 [~~Bed Allocation Services, Mail Code W-530~~], Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

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

(3) (No change.)

(c) Secondary selection process - new construction. When there are insufficient available beds after the primary selection, potential contractors may participate in a secondary selection process. The secondary selection is for potential contractors who wish to construct a nursing facility or an addition to an existing nursing facility.

(1) (No change.)

(2) Potential contractors seeking to contract to construct a nursing facility or an addition to an existing nursing facility in a high- occupancy area must demonstrate a history of quality care, as specified in §19.2322(d) [~~(g)(4)~~] of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not eliminate a new potential NFO who has no history of providing care. The NFO must make written reply to the public notice. The reply must be received by Long Term Care-Regulatory, Mail Code E-342 [~~Bed Allocation Services, Mail Code W-530~~], Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714- 9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

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

(3)-(11) (No change.)

(12) Providers may request an informal review of DHS actions involving this section and §19.2322 of this title (relating to Allocation, Reallocation, and Decertification Requirements) by writing to Manager, Long Term Care-Regulatory, Mail Code E-342 [~~Bed Allocation Services~~], Texas Department of Human Services, [~~Mail Code W-530,~~] P.O. Box 149030, Austin, Texas 78714-9030. The review must be requested within 30 days of the DHS action.

(d) (No change.)

(e) Requesting occupancy reports. DHS computes occupancy rates by using the information contained in DHS's Nursing Facility Monthly Occupancy Report form. Monthly copies of occupancy-rate information for a particular county are available on request. Requests may be sent to Long Term Care Bed-Regulatory, Mail Code E-342 [~~Allocation Services, Mail Code W-530~~], Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

(f) (No change.)

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

Filed with the Office of the Secretary of State, on April 19, 1999.

TRD-9902266
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: July 1, 1999
For further information, please call: (512) 438–3765

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Chapter 75. Investigations

Subchapter A. General Procedures

The Texas Department of Human Services (DHS) proposes the repeal of §75.1 and §75.2, concerning licensing investigations and investigation of unlicensed operating facilities; and proposes an amendment to §75.3, concerning investigations referred by commissioner, in its Investigations chapter. The pur-

pose of the repeals is to delete obsolete rules because the Office of the Inspector General no longer investigates licensed or unlicensed operating facilities. The purpose of the amendment to §75.3 is to change the name in the rule from the Texas Department of Human Resources to the Texas Department of Human Services to reflect the current name of the agency responsible for the rule.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be 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 eliminate obsolete provisions and correct obsolete references. There will be no effect on small businesses because these rules relate to procedural and operational changes within DHS. 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 June Pence at (512) 231-5778 in DHS's Office of Inspector General, Office of Program Integrity. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit- 159, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §75.1, §75.2

(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 repeal is proposed under the Human Resources Code, Title 2, Chapter 21, which provides the department with the authority to allocate and re-allocate functions of the agency.

The repeal implements §21.005 of the Human Resources Code.

§75.1. Licensing Investigations.

§75.2. Investigation of Unlicensed Operating Facilities.

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902237
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: August 15, 1999
For further information, please call: (512) 438–3765

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40 TAC §75.3

The amendment is proposed under the Human Resources Code, Title 2, Chapter 21, which provides the department with the authority to allocate and re-allocate functions of the agency.

The amendment implements §21.001 of the Human Resources Code.

§75.3. Investigations Referred by Commissioner.

The Investigations Division, Texas Department of Human Services (DHS) [~~DHR~~], performs investigations as may be referred by the commissioner, DHS [~~DHR~~]. These may include:

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

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

Filed with the Office of the Secretary of State, on April 16, 1999.

TRD-9902238
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: August 15, 1999
For further information, please call: (512) 438–3765

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Part II. Texas Rehabilitation Commission

Chapter 106. Contract Administration

Subchapter A. Acquisition of Client Goods and Services

40 TAC §106.32

The Texas Rehabilitation Commission (TRC) proposes an amendment to §106.32, concerning Adverse Actions.

The section is being amended to add the words "or grant" in subsection (a) and "or grantee" in subsection (b).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, 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.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to include grants within the appeal rules for contracts. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

§106.32. Adverse Actions.

(a) The Commission may implement adverse actions based on nonperformance or noncompliance with the terms of the express contract or grant. These actions may include:

(1) Suspension of referrals;

(2) Withholding of payments;

(3) Disallowance of all or part of the cost of grants and cost reimbursement contracts only;

(4) Termination; and

(5) Other remedies allowed by state and federal laws and these rules.

(b) A contractor or grantee has the right to appeal any adverse action.

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

Filed with the Office of the Secretary of State, on April 15, 1999.

TRD-9902201
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: May 30, 1999
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 45. Marketing Practices

Subchapter B. Standards for Identity for Wine

16 TAC §45.46

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Alcoholic Beverage Commission has been automatically withdrawn. The amended section as proposed appeared in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10597).

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902239

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TITLE 22. EXAMINING BOARDS

Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter B. Professional and Technical Standards

22 TAC §663.21

The Texas Board of Professional Land Surveying has withdrawn from consideration for permanent adoption the proposed new §663.21, which appeared in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1899).

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902245
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: April 19, 1999
For further information, please call: (512) 452–9427

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 2. Open Seasons and Bag Limits – Hunting Provisions

31 TAC §65.64

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the amendment to §65.64, which appeared in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1574).

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902248
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 19, 1999
For further information, please call: (512) 389–4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XII. Texas Military Facilities Commission

Chapter 379. Administrative Rules

37 TAC §§379.1–379.3

The Texas Military Facilities Commission has withdrawn from consideration for permanent adoption new §§379.1–379.3, which appeared in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11787).

Filed with the Office of the Secretary of State on April 13, 1999.

TRD-9902170
Jerry D. Malcolm

Executive Director
Texas Military Facilities Commission
Effective date: April 13, 1999

For further information, please call: (512) 406–6971

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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 IV. Office of the Secretary of State

Chapter 95. Uniform Commercial Code

Subchapter A. General Provisions

1 TAC §95.111

The Office of the Secretary of State adopts amendments to §95.111, concerning General Provisions, and amendment to §95.304, concerning Acceptance and Refusal of Documents, without changes to the proposed text as published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 341).

The purpose of the amendments and new subsection is to correct adoption of new Uniform Commercial Code rules to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

The amendments provide current filing policies and procedures for the Uniform Commercial Code. Section.

No comments were received regarding adoption of the new rules.

The amendments are adopted under §§9.401-9.412 Texas Business and Commerce Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce 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 April 16, 1999.

TRD-9902226
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 6, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 463–5701

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Subchapter C. Acceptance and Refusal of Documents

1 TAC §95.304

The amendments are adopted under §§9.401-9.412 Texas Business and Commerce Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce 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 April 16, 1999.

TRD-9902227
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 6, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 463–5701

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Chapter 99. Standards of Conduct of State Officers and Employees

1 TAC §99.1, §99.2

The Office of the Secretary of State adopts the repeal of §99.1 and §99.2, concerning Financial Statement Filings by State Officers and Employees, without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1881).

The rules are being repealed because the Legislature transferred responsibility for the financial statement filings to the Texas Ethics Commission. The legislative authority, Texas Civil Statutes, Article 6252-9b, was repealed by an act of the 73rd Legislature, Chapter 268, §46(1), effective September 1, 1993.

No comments were received regarding adoption of these repeals.

The authority for this chapter no longer exists.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 1999.

TRD-9902356
Jeff Eubank
Assistant Secretary of State
State Ethics Advisory Commission

Effective date: May 11, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 463–5561

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Chapter 101. Practice and Procedure Before the Office of the Secretary of State

The Office of the Secretary of State adopts the repeal of §§101.4, 101.8-101.10, 101.20, 101.21, 101.31-101.34, 101.40, 101.42-101.44, 101.50, and 101.53, concerning Practice and Procedure Before the Office of the Secretary of State, without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1881).

These rules are being repealed because they duplicate procedures contained under Chapter 155 of this title (relating to Rules of Procedure) adopted in 1998 by the State Office of Administrative Hearings.

No comments were received regarding adoption of these repeals.

Subchapter A. General Rules

1 TAC §§101.4, 101.8–101.10

The repeals are adopted under authority of Texas Government Code, Chapter 2001, Subchapter A, §2001.004; Texas Civil Statutes, Article 1396-9.03; Texas Transportation Code, Chapter 722, §722.003; Texas Government Code, Chapter 406, Subchapter A, §406.023; Texas Election Code, §31.003; and Texas Business and Commerce Code, §17.08.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 1999.

TRD-9902358
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 11, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 463–5561

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Subchapter B. Initiation of Proceedings, Complaints, and Pleadings

1 TAC §101.20, §101.21

The repeals are adopted under authority of Texas Government Code, Chapter 2001, Subchapter A, §2001.004; Texas Civil Statutes, Article 1396-9.03; Texas Transportation Code, Chapter 722, §722.003; Texas Government Code, Chapter 406, Subchapter A, §406.023; Texas Election Code, §31.003; and Texas Business and Commerce Code, §17.08.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 1999.

TRD-9902357
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 11, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 463–5561

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Subchapter C. Prehearing Procedures

1 TAC §§101.31–101.34

The repeals are adopted under authority of Texas Government Code, Chapter 2001, Subchapter A, §2001.004; Texas Civil Statutes, Article 1396-9.03; Texas Transportation Code, Chapter 722, §722.003; Texas Government Code, Chapter 406, Subchapter A, §406.023; Texas Election Code, §31.003; and Texas Business and Commerce Code, §17.08.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 1999.

TRD-9902359
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 11, 1999
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For further information, please call: (512) 463–5561

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Subchapter D. Hearing Procedures

1 TAC §§101.40, 101.42–101.44

The repeals are adopted under authority of Texas Government Code, Chapter 2001, Subchapter A, §2001.004; Texas Civil Statutes, Article 1396-9.03; Texas Transportation Code, Chapter 722, §722.003; Texas Government Code, Chapter 406, Subchapter A, §406.023; Texas Election Code, §31.003; and Texas Business and Commerce Code, §17.08.

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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Jeff Eubank
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Subchapter E. Post-Hearing Procedures

1 TAC §101.50, §101.53

The repeals are adopted under authority of Texas Government Code, Chapter 2001, Subchapter A, §2001.004; Texas Civil Statutes, Article 1396-9.03; Texas Transportation Code, Chap-

ter 722, §722.003; Texas Government Code, Chapter 406, Subchapter A, §406.023; Texas Election Code, §31.003; and Texas Business and Commerce Code, §17.08.

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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Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463–5561

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Part XI. State Ethics Advisory Commission

Chapter 231. Advisory Opinions

1 TAC §§231.1–231.8

The Office of the Secretary of State adopts the repeal of §§231.1-231.8 adopted under the State Ethics Advisory Commission. These sections are adopted without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1886).

The rules are being repealed because the Legislature abolished the State Ethics Advisory Commission and transferred responsibility for Advisory Opinions to the Texas Ethics Commission. The legislative authority, Texas Civil Statutes, Article 6252-9b, was repealed by an act of the 72nd Legislature, Chapter 304 §1.38, effective January 1, 1993.

No comments were received regarding adoption of these repeals.

The authority for this chapter no longer exists.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 1999.

TRD-9902362
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: May 11, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 463–5561

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.98

The Railroad Commission of Texas adopts amendments to §3.98, relating to standards for management of hazardous oil and gas waste without changes to the proposed text as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1297).

The amendment to subsection (u) requires that annual reports be submitted on the form prescribed by the commission rather than the form prescribed by the United States Environmental Protection Agency. This amendment allows the use of a new reporting form developed by the commission, Form H-21. The commission anticipates that this form will be easier for affected operators to complete and information provided will be in a form more readily usable by the commission.

The commission also repeals subsection (cc) which set out the effective date of the original rule. This subsection is no longer necessary.

No comments on the proposed amendments were received.

The amendments to §3.98 are adopted under Texas Natural Resources Code, §81.052, which authorizes the commission to adopt all necessary rules for governing and regulating activities under its jurisdiction as set forth in Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.042, which authorizes the commission to make and enforce rules pertaining to field operations that pose a danger to life or property; Texas Natural Resources Code, §141.012, which authorizes the commission to adopt rules relating to the exploration, production, and development of geothermal energy and associated resources; Texas Natural Resources Code, §91.101(4), which authorizes the commission to adopt rules relating to the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste, as well as any other substance or material associated with any operation regulated by the commission under Texas Natural Resources Code, §91.101; Texas Natural Resources Code, §91.602, which authorizes the commission to adopt rules relating to the generation, transportation, treatment, storage, or disposal of hazardous oil and gas waste; and Texas Water Code, §27.036, which authorizes the commission to adopt rules relating to brine mining.

The Texas Natural Resources Code, §§ 81.052, 85.042, 91.101, 91.601-605, and 141.001-141.018; and Texas Water Code §27.036, are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 1999.

TRD-9902194
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: May 4, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 463–7008

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

The Public Utility Commission of Texas (commission) adopts the repeals of §23.6 relating to Spanish Language Requirements, §23.41 relating to Customer Relations, §23.42 relating to Refusal of Service, §23.43 relating to Applicant and Customer Deposit, §23.44 relating to New Construction, §23.45 relating to Billing, and §23.46 relating to Discontinuance of Service with no changes to the proposed text as published in the December 18, 1998 *Texas Register* (23 TexReg 12846). These repeals are necessary to avoid duplicative rule sections. These repeals are adopted under Project Number 17709. As a result of the reorganization of the commission's rules, new §§25.21-25.26 and §§25.28-25.31 concerning customer service have been adopted in Chapter 25, Substantive Rules Applicable to Electric Service Providers, and new §§26.21-26.31 concerning customer service have been adopted in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers to replace these sections.

The commission received no comments on the proposed repeals.

Subchapter A. General Rules

16 TAC §23.6

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 1999.

TRD-9902221
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 6, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 936–7308

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Subchapter E. Customer Service and Protection

16 TAC §§23.41, 23.42, 23.43, 23.44, 23.45, 23.46

These repeals are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 6, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 936–7308

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16 TAC §23.40

The Public Utility Commission of Texas (commission) adopts the repeal of §23.40 relating to Prepaid Local Telephone Service with no changes to the proposed text as published in the January 1, 1999, *Texas Register* (24 TexReg 19). This repeal is necessary to avoid duplicative rule sections. This repeal is adopted under Project Number 17709. As a result of the reorganization of the commission's rules, new §26.29 relating to Prepaid Local Telephone Service has been adopted in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, to replace §23.40.

The commission received no comments on the proposed repeal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: January 1, 1999
For further information, please call: (512) 936–7308

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Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter B. Customer Service and Protection

16 TAC §§25.21–25.26, 25.28–25.31

The Public Utility Commission of Texas (the commission) adopts new §25.21, relating to General Provisions of Customer Service and Protection; new §25.22, relating to Request for Service; new §25.23, relating to Refusal of Service; new §25.24, relating to Credit Requirements and Deposits; new §25.25, relating to Issuance and Format of Bills; new §25.26, relating to Spanish Language Requirements; new §25.28, relating to Bill Payment and Adjustments; new §25.29, relating to Disconnection of Service; new §25.30, relating to Complaints; and, new §25.31, relating to Information to Applicants and Customers with changes to the proposed text as published in the December 11, 1998, *Texas Register* (23 TexReg 12574). These sections are adopted under Project Number 19513.

New §25.21 presents specific definitions for "applicants," "customers," and "days," and establishes that the purpose of the customer service and protection rules is to set a minimum standard for the provision of utility service. New §25.21 also provides that utilities may adopt less restrictive standards for differing groups of customers as long as they do not discriminate against protected groups. New §25.22 replaces §23.44(c)(3) and (d) of this title (relating to New Construction). New §25.23 replaces §23.42 of this title (relating to Refusal of Service). New §25.24 replaces §23.43 of this title (relating to Applicant and Customer Deposit). New §25.25 replaces §23.45(a), (b), (c), and (e) of this title (relating to Billing). New §25.26 replaces §23.6 of this title (relating to Spanish Language Requirements). New §25.28 replaces §23.45 of this title (relating to Billing). New §25.29 replaces §23.46 of this title (relating to Discontinuance of Service). New §25.30 replaces §23.41(c) of this title (relating to Customer Relations). New §25.31 replaces §23.41(a) and (b) of this title (relating to Customer Relations).

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (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 held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC), Chapter 23, to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 25 has been established for all commission substantive rules applicable to electric service providers. The duplicative sections of Chapter 23 are proposed for repeal as each new section is proposed for publication in the new chapter. No one commented on the Section 167 requirement as to whether the reason for adopting the rules continues to exist. The commission finds that the reason for adopting these sections continues to exist.

The commission received written comments on the proposed rules from seven public interest (PI) groups (joint comments for Consumers Union (CU) Southwest Regional Office; Texas Ratepayers' Organization to Save Energy (ROSE); Texas Legal Services Center; Public Citizen, Texas Office; Gray Panthers, Texas; Texas Citizen Action; and Texas Alliance for Human Needs); Texas Department of Housing and Community Affairs (TDHCA); the South Texas Cooperatives (Jackson Electric Cooperative; Karnes Electric Cooperative; Nueces Electric Cooperative; San Patricio Electric Cooperative; Victoria Electric Cooperative; and Wharton County Electric Cooperative); Southwestern Public Service Company (SPS); El Paso Electric Company (EPE); Entergy, Gulf States, Inc. (EGS); Texas-New Mexico Power Company (TNMP); Texas Utilities Electric Company (TU); Houston Lighting & Power Company (HL&P); CSW (Central Power and Light Company; Southwestern Electric Power Company; and West Texas Utilities Company); and Texas Electric Cooperatives, Inc. (TEC). The commission also received reply comments from TU, CSW, East Texas Cooperatives (ETC), TDHCA, HL&P, EGS, and PI.

A public hearing on the proposed rules was held at the commission offices on February 9, 1999 at 9:00 a.m. Representatives from the South Plains Community Action Agency (SPCAA), Gulf Coast Community Services Association, Community Action Nacogdoches, Texas Legal Services Center, Texas Rose, EOAC of Waco, Community Action Council of South Texas, Community Action Agency of Brownsville, TU, SPS, and EGS offered oral comments at the public hearing. Others attending the public hearing were representatives from HL&P and CSW.

Certain proposed changes led to much disagreement between the commenting parties. These issues caused extensive debate and are discussed below.

Major Issues

§25.28(b), penalty on delinquent bills for retail service

The electric utility industry commenters (HL&P, TU, EGS, and TEC) strongly approved of the proposed rule change that would allow the electric utilities to impose a 5.0% penalty for late payment of bills on both commercial and residential customers. The current rule allows the 5.0% penalty to be applied only to commercial accounts. The industry commenters indicated that the costs incurred by utilities due to late payment could be taken out of the general rate base and applied directly to those who cause the extra cost. In contrast, PI and TDHCA strongly opposed the proposed change in the current rule. They indicated that the utilities already have the extra costs for late payment and uncollectable debts built into their rates, and this proposed rule would allow the utilities to collect these costs twice and, thus, increase revenues. PI and TDHCA also indicated that this penalty would have disastrous effects on the poor and those on fixed incomes. Based on these comments, the commission has withdrawn the proposed change and reverts back to its current rule, which does not allow a delinquent penalty for late payment on residential accounts.

The commission has based this decision on the following: (1) A more detailed analysis of each utilities' commission-approved rates would be required to determine whether the impact of additional revenues is significant enough to trigger a rate case; and (2) The Public Utility Regulatory Act, Chapter 36, Subchapter G (Rate Changes by Certain Electric Cooperatives), §36.254(b) "Application of Other Provisions", states that "A service fee or a service rule set by an electric cooperative under this subchapter must comply with commission rules that apply to all electric utilities." As such, the commission is precluded from modifying this rule so that rate deregulated electric cooperatives could impose a late fee on residential accounts.

§25.28(d)(1), underbilling

The proposed rule provides that an electric utility may backbill up to six months for underbilled accounts. In their comments, TU, HL&P, and EGS proposed allowing a utility to backbill as far back as they have records, at least on commercial customers. CSW proposed that backbilling and overbilling should be limited to two years. In their reply comments, PI and TDHCA indicated the time period in which backbilling is permitted should be decreased or eliminated. The commission believes that the rule is fair as proposed and the recommended changes are unnecessary.

§25.29(g), disconnection of ill and disabled

The proposed rule provides that service cannot be disconnected if such action would threaten the life of some person residing at the residence. HL&P and TU fully supported the new rule in their comments, because it clarified the conditions for prohibition of disconnection. PI and TDHCA argued for retaining the old language of prohibiting disconnection when a resident would become "seriously ill or more seriously ill" due to disconnection of service. The commission agrees with PI and proposed §25.29(g) is revised accordingly.

§25.29(i)(2), disconnection during extreme weather

The proposed rule sets the no-disconnect heat index temperature at 104 degrees Fahrenheit for extreme heat conditions. In their reply comments, HL&P and TU recommended that the heat index be raised to 105 degrees Fahrenheit, while EGS and CSW agreed with the demarcation at 104 degrees Fahrenheit. TDHCA and PI both recommended that the extreme heat temperature be set at 100 degrees Fahrenheit, based on information from the Texas Department of Health which states that use of fans may actually endanger lives at temperatures above 100 degrees Fahrenheit.

The commission believes that much of the confusion associated with the wording in the original rule could be associated with the term "heat alert" that is issued by the National Weather Service, because the heat index associated with this term is in excess of 110 degrees Fahrenheit. The 110 degree heat index alert has rarely, if ever, been reached and thus few heat alerts would ever be declared. The commission revises the wording of the original rule to change the disconnection trigger to the "heat advisory" declared by the National Weather Service (NWS). The NWS issues a heat advisory on a county-specific basis when the heat index reaches 105 degrees Fahrenheit or above; this could occur when the temperature is 90 degrees, with high humidity. The commission declines to adopt the PI recommendation to use a 100 degree heat index trigger to suspend disconnections because the NWS does not issue announcements at this heat index level and it would be administratively challenging for utilities to track the heat index county by county all summer long. Since TDHCA and PI comment that a 100 degree temperature is cause for health concerns, it appears that the 105 degree heat index advisory trigger should occur whenever absolute temperatures reach 100 degrees or higher.

The commission revises the proposed rule to prohibit disconnections throughout a utility's service territory after the NWS issues a heat advisory for any county in its service territory.

Other Issues

§25.21. General Provisions of Customer Service and Protection Rules.

CSW stated that the entities to which the rules apply in subsection (a) are too narrowly defined. It suggests that the rules were intended to govern customer service to retail customers, exclusive of those retail customers served by municipalities. The commission agrees that clarification is required and §25.21(a) is revised as follows: "Unless the context clearly indicates otherwise, in this subchapter the term 'electric utility' applies to all electric utilities that provide retail electric service in Texas. It does not apply to municipal utilities."

CSW and EGS recommended deleting "at a different location" from the definition of applicant in §25.21(c)(1), because anyone who applies for service, regardless of location, should be considered an applicant. The commission agrees and §25.21(c)(1) is revised as follows: "Applicant - A person who applies for service for the first time or reapplies after discontinuance of service."

§25.22. Request for Service.

TU, TEC, and STC recommended retaining the current language for proposed §25.22(1) because the proposed language makes the seven-day connection period a requirement rather than a guideline, as it is in the existing rule. EGS recommended inserting the phrase, "has met the credit requirements as provided for in §25.24 of this title and" after "the applicant" so that the electric utility can determine credit worthiness of the applicant prior to connecting service. The commission agrees with EGS' suggested change.

EGS recommended inserting the phrase, "and has complied with all applicable state and municipal regulations" at the end of the first sentence in proposed §25.22(3) so the electric utility will not have to connect service in violation of state and municipal regulations. TNMP recommended adding language that the parties could agree to a longer term than 90 days so special circumstances that are inherent in certain jobs can be addressed. The commission agrees with both of these recommendations and §25.22(3) is amended as follows: "Requests for new residential service requiring construction, such as line extensions, shall be completed within 90 days or within a time period agreed to by the customer and electric utility if the applicant has met the credit requirements as provided for in §25.24 of this title; made satisfactory payment arrangements for construction charges; and has complied with all applicable state and municipal regulations."

EGS recommended that §25.22(4) apply only to residential customers and the ten-day deadline for informing customers of expected costs and dates of completion should be raised to 15 working days because the existing rule does not apply to large industrial or commercial customers and the ten-day deadline may not be enough time in all instances. TU suggested retaining the current rule or, if the new rule were adopted, the ten-day deadline should begin only after all required information to complete the job is received from the customer. The commission believes the ten-day deadline is appropriate for all customer classes, and the rule will remain as proposed.

EGS recommended that §25.22(6) apply only to residential customers for the same reasons as discussed for §25.22(4); TU suggested retaining the current language for the same reason as EGS; and TNMP wanted the phrase "reasonable control" clarified and wording added that would allow agreements for longer periods than the 90 days for those jobs that would require extensive preparation and construction. The commission agrees with TNMP and the first sentence of §25.22(6) is revised as follows: "Unless the delay is beyond the reasonable control of the electric utility, a delay of more than 90 days shall constitute failure to serve, unless the customer and electric utility have agreed to a longer term."

HL&P recommended that the commission-approved brochure on renewable energy sources be reviewed and revised to satisfy the requirements of §25.22(7) relating to on-site renewable energy and distributed generation technology alternatives. This is a good suggestion and the commission may implement it as workload permits. In the meantime, however, the electric utility companies should develop their own material on this issue to satisfy the rule.

TU, CSW, EGS, HL&P, EPE, and TEC recommended deleting the requirement to inform applicants as part of the initial contact about their right to file a complaint with the commission (§25.22(8)), because this information is contained in the pamphlet, "Your Rights as a Customer." They were also concerned that giving the customer this information in the initial contact would convey a negative impression of the company's service quality. PI stated that it is a benefit to all residential ratepayers to be informed of the commission's role in customer protection. PI further stated that the rule could benefit applicants without being a detriment to utility operations by including a simple statement (e.g., "If you think you have been treated unfairly, you have the right to file a complaint with the PUC.")

The commission believes that the utility should provide the applicant a copy of the "Your Rights as a Customer" brochure and inform the applicant of the complaint process if the applicant thinks the applicant has been treated unfairly and revises proposed §25.22(8) accordingly.

§25.23. Refusal of Service.

EGS proposed adding a new subsection, "(a)(7) Failure to provide adequate identification" and a new subsection, "(a)(8) Application is made in the name of a minor, a deceased person, or a fraudulent name as acceptable reason to refuse service." The commission disagrees, because there is nothing that prohibits the electric utility from adopting these standards as part of their procedures since "adequate identification" is not defined. The rule will remain as proposed.

CSW suggested that refusal of service should be allowed for failure to comply with any of the electric utility's tariff requirements. The commission declines to add the term "tariff" since it broadens the application of this section unnecessarily, therefore, §25.23(a) is revised as follows: "An electric utility may refuse to serve an applicant until the applicant complies with state and municipal regulations and the utility's rules and regulations on file with the commission or for any of the reasons identified below."

HL&P and CSW suggested that proposed §25.23(a)(4) concerning "intent to deceive" needs to be clarified so that there is a clear understanding of what constitutes "deception". Both CSW and HL&P suggested specific wording to accomplish this. The commission agrees that more clarity is needed and the first sentence of §25.23(a)(4) is revised as follows: "The applicant applies for service at a location where another customer received, or continues to receive, service and the utility bill is unpaid at that location and the electric utility can prove the change in identity is made in an attempt to help the other customer avoid or evade payment of an electric utility bill."

CSW recommended that reference to "present customer" in proposed §25.23(c) be deleted because under §25.21(c)(2) a customer is a person who is currently receiving service; that a new subsection be added to proposed §25.23(c) to make clear that refusal to pay a bill of another does constitute valid grounds for refusing service if the conditions of §25.23(a)(4) are met; and that the "and" after §25.23(c)(2) should be changed to an "or" and moved to the end of §25.23(c)(3).

The commission agrees with all of these recommendations, and the rule is changed accordingly.

EGS, HL&P, CSW, and TU all recommended that proposed §25.23(c)(3) be amended to allow a utility to backbill for a period greater than six months if the backbilling was the result of theft of service because theft of service is not addressed. They were also concerned that the wording of proposed §25.23(c)(3) allows the customer to wait six months before complaining in order to avoid a legitimate backbilling charge. The commission agrees with both of these recommendations, and §25.23(c)(3) is revised as follows: "failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service."

§25.24. Credit Requirements and Deposits.

CSW recommended adding the phrase, "nor had a check dishonored", to the end of proposed §25.24(a)(2)(A)(ii) because timely remittance of a check is not an indication of credit worthiness unless the check is honored by the bank. Because a dishonored check would be the same as a late payment, the commission does not believe the phrase is necessary, and the rule remains as proposed.

Proposed §25.24(a)(2)(A)(iii) included the phrase "during the last 12 consecutive months of service was not late in paying a bill." This language is inconsistent with that in the current §23.43(b)(3)(A). The commission did not intend to change the current credit requirements for residential applicants by requiring a perfect payment record. The commission revises that part of §25.24(a)(2)(A)(iii) as follows: "during the last 12 consecutive months of service was not late in paying a bill more than once".

TNMP recommended that §25.24(a)(2)(B)(i-iv) should be deleted because these are not assurances that a customer will pay his/her electric utility bill. Since these provisions are not intended to guarantee that a customer will pay his/her bill, but only to demonstrate satisfactory credit, the commission disagrees, and the rule remains as proposed.

TU and HL&P recommended that the term "current bill" in proposed §25.24(c)(2) be replaced by the term "total amount due" because the term "current bill" could be interpreted as the current month's consumption. The commission agrees that clarity is needed, and the rule is revised to reflect "the total amount due on the current bill".

CSW recommended that the last sentence of §25.24(c)(2) be deleted, because it is difficult for the electric utility and the customer to track whether the option has been exercised by the customer during the previous 12 months. CSW suggested replacement language for the rule; however, the commission disagrees with the recommendation, and it will not be implemented.

EGS recommended that the language in proposed §25.24(d)(1)(A) be revised to read as follows: "the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings" because this wording is clearer. The commission agrees, and the rule is revised accordingly.

CSW recommended that in proposed §25.24(d)(2), reference should be made to an "additional deposit" and not to a "new deposit" because the section is referring to an additional deposit. The commission agrees, and the rule is revised accordingly.

HL&P and TU recommended the term, "current bill," in proposed §25.24(d)(3) be replaced with the term, "total amount due" because the term "current bill" could be interpreted as the current month's consumption. CSW recommended that §25.24(d)(3) be deleted for the same reasons as presented for §25.24(c)(2).

The commission agrees with HL&P and TU, but disagrees with the CSW recommendation. Subsection (d)(3) is revised as follows: "Instead of an additional deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months".

EGS recommended that the language for §25.24(f) be changed to read as follows: "The total of all deposits shall not exceed an amount equivalent to twice the highest monthly bill for the previous 12 months" because it affords the company more coverage against high-risk applicants/customers. The commission disagrees with this recommendation, and §25.24(f) remains as proposed.

CSW commented that the reference to the interest rate set by the commission in proposed §25.24(g) should be to the rate set on December 1 of the preceding year. The commission agrees, and the rule is revised accordingly.

TU commented that §25.24(h)(1-4) should be deleted because this information is contained in "Your Rights as a Customer" pamphlet. The commission modifies the rule to indicate that the specified information is in the brochure, which should be given to the customer when the deposit is needed.

EGS recommended that a new §25.24(j)(6) be added and to read as follows: "An electric utility may require a guarantor to maintain satisfactory credit as a condition of continuing to guarantee the deposit for another residential customer" because this will clarify that guarantors must maintain good credit standing as a condition for their guarantee of a deposit for another residential customer. The commission declines to specify what requirements an electric utility may impose on a guarantor.

CSW recommended that the last sentence of proposed §25.24(k)(1) be deleted because the circumstances under which a customer or applicant may be required to make a deposit or provide a letter of credit are clearly set out for an applicant who has been a prior customer of the electric utility (see §§25.24(a)-(e)). If those criteria apply, the electric utility should be able to require the individual to make a deposit, regardless of whether the transfer of service is or is not considered a disconnection of service. The commission does not agree that a transfer of service should trigger the same deposit requirements, and declines to make the change proposed by CSW.

CSW recommended that the last sentence of proposed §25.24(k)(2) be revised to address letters of guarantee, because if the customer has established credit through a letter of guarantee and fails to meet the refund criteria, it should be permissible to retain the letter of guarantee. EGS recommended that the 24 months of consecutive billings in §24.25(k)(2) apply to both residential and commercial customers. The commission agrees with the recommendation of CSW, but disagrees with the recommendation of EGS. The last sentence of §25.24(k)(2) is revised to read as follows: "If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained".

§25.25. Issuance and Format of Bills.

TU and TEC recommended that §25.25(c)(4) be deleted because the information is contained in the "Your Rights as a Customer" pamphlet. The commission believes this information should be on the bill as well, and the rule remains as proposed.

TU, TEC, EGS, and EPE recommended that §25.25(c)(5) be deleted because the information is contained in the "Your Rights as a Customer" pamphlet. The commission agrees and revises the rule accordingly.

TNMP requested that application of §25.25(c)(5) be delayed until it implements its new Y2K software package, because it currently does not have the ability to add this information to its bill. The commission proposes waivers for a limited period of time if an electric utility requests, additional time due to software upgrades that would be necessary to comply with the rule.

CSW commented that the last two sentences of proposed §25.25(d)(1) are unrealistic. If the meter reader cannot read the meter, it would be impossible for the electric utility to mail the customer a card, have the customer read the meter, and have the customer mail the card back to the electric utility in time for the normal issuance of the bill. The bill would have to be estimated anyway. The commission believes the proposed language is clear in its intent, and the rule remains as proposed.

EGS, TNMP, TU, and CSW recommended deleting the last sentence of proposed §25.25(f) because the meaning is unclear and it contradicts the first sentence. The commission agrees, and the last sentence of proposed §25.25(f) is deleted.

§25.26. Spanish Language Rule.

PI recommended that proposed §25.26(a) be updated to refer to the most current U.S. Census rather than the 1990 Census. The commission agrees and revises §25.26(a) accordingly.

§25.28. Bill Payment and Adjustments.

STC suggested revising the phrasing in proposed §25.28(c)(3)(C) to avoid the impression that usurious rates were allowed. The commission agrees and revises §25.28(c)(3)(C) as follows: "All interest shall be compounded monthly based on the annual rate".

CSW commented that it is unnecessary in all instances when the underbilling is $50 or more that the period of the deferred payment plan extend as long as the period of backbilling as presented in §25.28(d)(3) because it is not realistic to allow a commercial account to have two years to pay a $50 backbilling. TU and TDHCA both agreed with the proposed rule and commented that $50 was a good medium point. The commission finds that §25.28(d)(3) is reasonable, and it remains as proposed.

On §25.28(d)(4), CSW commented that interest should apply to backbilling in the same manner as it applies to overbilling. The commission believes that a customer should not be charged interest for an error made by the company; therefore, the rule remains as proposed.

EGS, TEC, and STC commented that §25.28(e)(2) should be revised to include the payment of the average billing and reinstate the current resolution time limit of 60 days. They contend that the customer should be required to pay the average billing to avoid accumulating a large past due balance. The 60-day resolution time period clarifies when disconnection can occur. TU and HL&P also recommended reinstating the 60-day resolution time limit because customers could stall an investigation and avoid paying the disputed amount indefinitely. CSW recommended retaining the current rule because it provides that customers need not pay the disputed amount that exceeds the average billing. The commission agrees that the payment of the average billing is a current

requirement that needs to be retained in the proposed rule; however, the current 60-day resolution time limit will not be reinstated. The commission revises §25.28(e) by adding new paragraph (3) to address disputed amounts in complaints filed with the commission, and paragraph (4) to address payment of the average billing on disputed amounts billed by electric utilities.

CSW and STC commented that proposed §25.28(h) should allow payment programs of less than three months. HL&P and EGS supported this in their reply comments because a payment arrangement of less than three months may be more beneficial to the customer. The commission believes that the proposed rule does not prohibit the electric utilities from making payment arrangements of less than three months; therefore, the rule remains as proposed.

PI commented that proposed §25.28(i) should allow deferred payment plans to be a minimum of six months; that all late fees should be waived on deferred payment plans; and electric utilities should be required to offer deferred payment plans to all customers because this would be more beneficial to the elderly and low income households. TDHCA commented that §25.28(i) should extend the term of deferred payment agreements to six months and the plans should not go into effect until low consumption months. TDHCA also contends that electric utilities should offer customers an arrears forgiveness program, and the number of disconnect notices a customer receives in a 12-month period should have no effect on whether the customer is offered a deferred payment plan, because this burdens low-income families and those on fixed incomes.

In their reply comments, TU, HL&P, CSW, and EGS all disagreed with extending deferred payment plans to six months. They explained that the present wording allows the electric utilities to work with customers and extend deferred payment plans for whatever term is necessary. These utilities also disagreed with extending deferred payment plans to all customers due to credit risk. TU pointed out in its reply comments that the pilot Maintenance of Effort (MER) program, which was equivalent to an arrears forgiveness program, was disastrous to both the company and the customers. CSW commented that proposed §25.28(i) should require all deferred payment plans to be in writing and not just those made over the telephone.

The commission believes that §25.28(i) adequately addresses the length and terms of a deferred payment agreement. However, TDHCA raised a question about the relevance of the number of disconnection notices a customer receives in a 12-month period to whether or not a deferred payment plan is offered. The Texas Legislature is considering two proposed bills that address the issue that TDHCA has addressed; therefore, the commission will delay action on this comment until a future date. The commission also agrees that all deferred payment plans should be put in writing. The commission revises the last sentence of §25.28(i) as follows: "A deferred payment plan may be established in person or by telephone, and all deferred payment plans shall be put in writing."

CSW commented that §25.28(i)(1) should allow an electric utility to refuse a deferred payment plan to customers who have rendered dishonored checks to the electric utility in the past 12 months because of credit risks associated with this type of behavior. The commission disagrees with CSW because the electric utility can require payment in either cash or money order from a customer who has rendered a dishonored check. The rule stands as proposed.

CSW recommended that §25.28(i)(2) should preserve the existing requirements and clarify that the customer must initially pay the current bill and a reasonable amount of the outstanding bill, not to exceed one-third of the outstanding bill, and may pay the remainder of the outstanding bill in equal installments lasting at least three billing cycles. The commission believes that the proposed wording establishes the three-billing cycle plan and is clearer than the current rule; therefore, §25.28(i)(2) remains as proposed.

CSW comments that proposed §25.28(i)(4)(H) should not require deferred payment plans made over the telephone and mailed to the customer for signature to be mailed back to the utility. This requirement would delay the effect and/or implementation of the agreement until it is mailed back. If the agreement is not returned, it makes the electric utility's status with the customer and disconnection ambiguous. The commission agrees and §25.28(i)(4)(H) is revised to clarify that an agreement is in effect unless the customer contacts the electric utility to challenge the terms as they are written.

HL&P commented that a customer should be required to prove any downturn in his/her financial condition in order to renegotiate a deferred payment plan as presented in §25.28(i)(4)(I). The proposed rule does not prohibit the electric utility from establishing criteria that will be consistently used during the renegotiation process; therefore, the rule remains as proposed.

§25.29. Disconnection of Service.

CSW commented that the last sentence of proposed §25.29(a) should be revised as follows: "Disconnection is an option allowed by the commission, not a requirement placed upon the utility by the commission." This shows the option is "allowed" not "offered" by the commission. The commission agrees, and the rule is revised accordingly.

CSW recommended that proposed §25.29(b)(3) allow disconnection for other tariff violations, as stated in comments to proposed §25.23(a). The commission believes that expanding disconnections to "other tariff violations" unnecessarily broadens the scope of this rule. As a result, the rule remains as proposed.

TU commented that proposed §25.29(d)(4) would allow a customer to wait more than six months or delay payment on a backbilled amount more than six months in order to avoid ever paying what could be a legitimate underbilling. The commission disagrees and believes the rule is fair and understandable as proposed.

TU commented that §25.29(d)(5) should permit disconnection if the disputed amount is not paid within the current 60-day time limit based on comments concerning §25.28(e)(2). The commission disagrees, because there is no longer a 60-day time limit.

CSW commented that proposed §25.29(d)(5) should allow disconnection if the average bill is not paid for reasons commented on §25.28(e)(2). The commission agrees and revises §25.29(d)(5) as follows: "failure to pay disputed charges, except for the required average billing payment, until a determination as to the accuracy of the charges has been made by the electric utility or the commission and the customer has been notified of this determination;".

CSW suggested that the wording in the current §23.46(f) be retained for §25.29(e) because the new wording allows disconnection on the day after a holiday or weekend when utility personnel may not be available to take payments or perform reconnections, and the old rule takes care of this problem. The commission finds the wording of proposed §25.29(e) addresses the same issues as §23.46(f). Therefore, the subsection remains as proposed.

CSW commented that in §25.29(g)(1)(A), contact made to the utility should be by the "stated date of disconnection" not by the "due date of the bill" since the customer has received a disconnection notice. The commission agrees, and the rule is revised accordingly.

TDHCA and PI commented that the prohibition on disconnection in §25.29(g)(2) should be for the duration of the illness, as determined by a physician in order to better protect the ill resident. HL&P and TU disagreed with this in their reply comments citing that an open-ended time period would lead to abuse. The commission believes that the 63-day time limit is a sufficient period to balance the concerns of all parties. The rule remains as proposed.

TDHCA commented that the word "grantees" be changed to "clients" in §25.29(h) in order to remain consistent with their agency language. The commission agrees, and the rule is revised.

PI recommended adding the following language to §25.29(h): "No electric utility may terminate service to a delinquent residential customer for a billing period in which the electric utility receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service" because the current wording is unclear and misrepresents the role of the customer. The commission agrees, and the rule is revised accordingly.

CSW recommended that proposed §25.29(k)(4) be modified to provide disconnection notices in Spanish only to those electric utilities to which §25.26(a) applies. The commission disagrees because disconnection notices should be in both English and Spanish to assure that the individual customer is informed he or she will be disconnected, and what to do to prevent it. The rule remains as proposed.

EGS and TU commented that proposed §25.29(k)(5) should be a toll-free number instead of a statement of notification because they believe a customer should contact a major company service center; CSW commented that the notice should contain the contact number of the electric utility's corporate offices and not just a local office because the customer should be able to contact the utility. The commission believes the notification statement contains important customer information that is necessary when the customer receives the disconnection notice; therefore, it will be retained. Furthermore, the commission agrees with CSW that a corporate toll-free number should be included on the notice. The last sentence of §25.29(k)(5) is revised as follows: "The notice shall also advise the customer to contact the electric utility for more information."

§25.30. Complaints.

TU, TEC, EPE, EGS, CSW, and STC commented that the requirement in proposed §25.30(a) that the utility complete an investigation of a customer complaint within 15 calendar days is unreasonable. The commenters stated that additional time is required to contact the customer and to make a correct determination on the merits of the complaint. TU stated that if a change to the 30 calendar days was inevitable, then the change should not be less than 15 working days. HL&P also recommended 15 working days, while SPS recommended 20 calendar days. The commission believes that while most complaints can be resolved within 15 calendar days, additional time is required for others. The commission modifies proposed §25.30(a) to state that the utility shall investigate and advise the complainant of the results of the investigation within 21 days after the complaint is forwarded to the utility.

CSW commented that §25.30(b)(3) should require the results of a supervisory review by the utility to be reduced to writing if it is not resolved to the satisfaction of the customer, even if a written copy is not requested. The rule does not prohibit the electric utility from reducing the results of its supervisory reviews to writing and each electric utility can make this determination. Therefore, the rule remains as proposed.

TEC, EPE, EGS, CSW, STC, and TU commented that the requirement in proposed §25.30(c)(2) that the utility complete an investigation of a commission complaint within 15 calendar days is unreasonable. TU commented that it should not be less than 15 working days if a change is inevitable. HL&P also recommended 15 working days, while SPS recommended 20 calendar days.

The Legislature places a high value on prompt resolution of complaints as evidenced by a commission performance measure. Also, electronic communication should shorten the time for sending complaints and receiving responses. Therefore, the commission amends §25.30(c)(2) to extend the time allowed for a utility investigation of a commission complaint from 15 calendar days to 21 days.

§25.31. Information to Applicants and Customers.

HL&P and TU recommended deleting the phrase "or transfer existing service to a new location" from proposed §25.31(a). They argue that it would put an undue cost on the electric utility to supply a customer who is merely transferring his service to a new location, with information he has already been supplied. The commission agrees but will address the matter of the customers information packet in §25.31(a)(3) by not requiring the packet be given to those customers that are transferring service.

PI recommended that a requirement be added to §25.31(a)(1) making electric utilities use standardized terms and pricing when describing pricing options to customers so as to make it less confusing. The commission does not believe that standardized terms and pricing are necessary to describe the lowest-priced alternatives.

HL&P recommended inserting a statement into proposed §25.31(a)(1) that places responsibility on non-residential applicants for providing complete and accurate information relating to their service requirements so that the electric utility can give accurate information about lowest-priced alternatives. The commission agrees that the electric utility needs accurate information from the applicant, however, it is not necessary to include this requirement in the rule because it is understood that the utility can only give an accurate estimate based on the information they are given by the applicant/customer. The rule remains as proposed.

CSW recommended that the commission's e-mail address be added to the information contained in proposed §25.31(c)(5)(I)

so customers can contact the commission by e-mail. The commission agrees, and the rule is modified accordingly.

HL&P, EGS, TU, and CSW recommended that proposed §25.31(c)(5)(J) should have a toll-free number where this information can be obtained instead of listing all utility offices and authorized payment locations because of the large numbers of locations they have. The commission agrees, and the rule is revised accordingly.

SPS commented that the information on the critical load customer list is proprietary information contained in its Emergency Operations Plan and feels that proposed §25.31(c)(5)(R) should be deleted because of this. The commission believes there is some confusion in the way the proposed rule is worded and will amend the rule to have the electric utility provide information on how a residential customer can be placed on the critical load list. The amended §25.31(c)(5)(R) will read as follows: "information that contains the criteria on how a residential customer can be recognized as a critical load customer, the benefits of being a critical load customer in an emergency situation, and the process for being placed on the critical load list."

All comments, including any not specifically referenced herein, were fully considered by the commission. Where appropriate, non-substantive clarifications identified in Project Number 19517, *Transfer of Existing Telephone Customer Service and Protection Rules to New Chapter 26 and Associated Changes* are applied to these rules. The commission also makes other minor changes for clarification.

These new sections are 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 specifically, §§37.151 and 38.001 which require the commission to regulate electric utility operations and services; §37.151 which grants the commission authority to require an electric utility to make service available within a reasonable time after receipt of a bona fide request for service; §36.051 which authorizes the commission to establish and regulate rates of an electric utility; §§37.051 and 38.151 which require certificate holders to provide continuous and adequate service in their service areas; §38.001 which requires electric utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §38.002 which grants the commission authority to adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow, to adopt adequate and reasonable standards for measuring a condition, including quantity and quality relating to the furnishing of service, to adopt reasonable rules for examining, testing, and measuring a service, and adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure service.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 36.051, 37.051, 37.151, 38.001, and 38.151.

§25.21. General Provisions of Customer Service and Protection Rules.

(a) Application. Unless the context clearly indicates otherwise, in this subchapter the term "electric utility" applies to all electric utilities that provide retail electric utility service in Texas. It does not apply to municipal utilities.

(b) Purpose. The purpose of the rules in this subchapter is to establish minimum customer service standards that electric utilities must follow in providing electric service to the public. Nothing in these rules should be interpreted as preventing an electric utility from adopting less restrictive policies for all customers or for differing groups of customers, as long as those policies do not discriminate based on race, color, sex, nationality, religion, or marital status.

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

(1) Applicant - A person who applies for service for the first time or reapplies after discontinuance of service.

(2) Customer - A person who is currently receiving service from an electric utility in the person's own name or the name of the person's spouse.

(3) Days - Unless the context clearly indicates otherwise, in this subchapter the term "days" shall refer to calendar days.

§25.22. Request for Service.

Every electric utility shall initiate service to each qualified applicant for service within its certificated area in accordance with this section.

(1) Applications for new electric service not involving line extensions or construction of new facilities shall be filled within seven working days after the applicant has met the credit requirements as provided for in §25.24 of this title (relating to Credit Requirements and Deposits) and complied with all applicable state and municipal regulations.

(2) An electric utility may require a residential applicant for service to satisfactorily establish credit in accordance with §25.24 of this title (relating to Credit Requirements and Deposits), but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills.

(3) Requests for new residential service requiring construction, such as line extensions, shall be completed within 90 days or within a time period agreed to by the customer and electric utility if the applicant has met the credit requirements as provided for in §25.24 of this title; and made satisfactory payment arrangements for construction charges; and has complied with all applicable state and municipal regulations. For this section, facility placement which requires a permit for a road or railroad crossing will be considered a line extension.

(4) If facilities must be constructed, then the electric utility shall contact the customer within ten working days of receipt of the application, and give the customer an estimated completion date and an estimated cost for all charges to be incurred by the customer.

(5) The electric utility shall explain any construction cost options such as rebates to the customer, sharing of construction costs between the electric utility and the customer, or sharing of costs between the customer and other applicants following the assessment of necessary line work.

(6) Unless the delay is beyond the reasonable control of the electric utility, a delay of more than 90 days shall constitute failure to serve, unless the customer and electric utility have agreed to a longer term. The commission may revoke or amend an electric utility's certificate of convenience and necessity (or other certificate) for such failures to serve, or grant the certificate to another electric utility to serve the applicant, and the electric utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act §15.023 and §15.024.

(7) If an electric utility must provide a line extension to or on the customer's premises and the utility will require that customer to pay a Contribution in Aid to Construction (CIAC), a prepayment, or sign a contract with a term of one year or longer, the electric utility shall provide the customer with information about on- site renewable energy and distributed generation technology alternatives. The information shall comply with guidelines established by the commission, and shall be provided to the customer at the time the estimate of the CIAC or prepayment is given to the customer. If no CIAC or prepayment is required, the information shall be given to the customer before a contract is signed. The information is intended to educate the customer on alternate options that are available.

(8) As part of their initial contact, electric utility employees shall give the applicant a copy of the "Your Rights as a Customer" brochure, and inform an applicant of the right to file a complaint with the commission pursuant to §25.30 of this title (relating to complaints) if the applicant thinks the applicant has been treated unfairly.

§25.23. Refusal of Service.

(a) Acceptable reasons to refuse service. An electric utility may refuse to serve an applicant until the applicant complies with state and municipal regulations and the utility's rules and regulations on file with the commission or for any of the reasons identified below.

(1) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the applicant's facilities do not comply with all applicable state and municipal regulations.

(2) Violation of an electric utility's tariffs. The applicant fails to comply with the electric utility's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments which interfere with the service of others. The electric utility shall provide the applicant notice of such refusal and afford the applicant a reasonable amount of time to comply with the utility's tariffs.

(3) Failure to pay guarantee. The applicant has acted as a guarantor for another customer and failed to pay the guaranteed amount, where such guarantee was made in writing to the electric utility and was a condition of service.

(4) Intent to deceive. The applicant applies for service at a location where another customer received, or continues to receive, service and the electric utility bill is unpaid at that location, and the electric utility can prove the change in identity is made in an attempt to help the other customer avoid or evade payment of an electric utility bill. An applicant may request a supervisory review as specified in §25.30 of this title (relating to Complaints) if the electric utility determines that the applicant intends to deceive the electric utility and refuses to provide service.

(5) For indebtedness. The applicant owes a debt to any electric utility for the same kind of service as that being requested. In the event an applicant's indebtedness is in dispute, the applicant shall be provided service upon paying a deposit pursuant to §25.24 of this title (relating to Credit Requirements and Deposits).

(6) Refusal to pay a deposit. Refusing to pay a deposit if applicant is required to do so under §25.24 of this title.

(b) Applicant's recourse. If an electric utility has refused to serve an applicant under the provisions of this section, the electric utility must inform the applicant of the reason for its refusal and that the applicant may file a complaint with the commission as described in §25.30 of this title.

(c) Insufficient grounds for refusal to serve. The following are not sufficient cause for refusal of service to an applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay for merchandise or charges for non-regulated services, including but not limited to insurance policies, Internet service, or home security services, purchased from the electric utility;

(3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; or

(4) failure to pay the bill of another customer at the same address except where the change in identity is made to avoid or evade payment of an electric utility bill.

§25.24. Credit Requirements and Deposits.

(a) Credit requirements for permanent residential applicants.

(1) An electric utility may require a residential applicant for service to establish and maintain satisfactory credit as a condition of providing service.

(A) Establishment of credit shall not relieve any customer from complying with the electric utility's requirements for prompt payment of bills.

(B) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(2) A residential applicant can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (C) of this paragraph.

(A) The residential applicant:

(i) has been a customer of any electric utility for the same kind of service within the last two years;

(ii) is not delinquent in payment of any such electric utility service account;

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once;

(iv) did not have service disconnected for nonpayment; and

(v) is encouraged to obtain a letter of credit history from the applicant's previous electric utility, and electric utilities are encouraged to provide such information with the final bill.

(B) The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(i) generally acceptable credit cards;

(ii) letters of credit reference;

(iii) the names of credit references which may be quickly and inexpensively contacted by the electric utility; or

(iv) ownership of substantial equity that is easily liquidated.

(C) The residential applicant is 65 years of age or older and does not have an outstanding account balance incurred within the

last two years with the electric utility or another electric utility for the same type of utility service.

(3) If satisfactory credit cannot be demonstrated by the residential applicant using these criteria, the applicant may be required to pay a deposit pursuant to subsection (c) of this section.

(b) Credit requirements for non-residential applicants. For non-residential service, if an applicant's credit has not been demonstrated satisfactorily to the electric utility, the applicant may be required to pay a deposit.

(c) Initial deposits.

(1) A residential applicant or customer who is required to pay an initial deposit may provide the electric utility with a written letter of guarantee pursuant to subsection

(j) of this section, instead of paying a cash deposit.

(2) An initial deposit may not be required from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written termination notice that requests such deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(d) Additional deposits.

(1) An additional deposit may be required if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings; and

(B) a disconnection notice has been issued for the account within the previous 12 months.

(2) An electric utility may require that an additional deposit be paid within ten days after the electric utility has issued a written disconnection notice and requested the additional deposit.

(3) Instead of an additional deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(4) The electric utility may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be issued concurrently with either the written request for the additional deposit or current usage payment.

(e) Deposits for temporary or seasonal service and for weekend residences. The electric utility may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.

(f) Amount of deposit. The total of all deposits shall not exceed an amount equivalent to one- sixth of the estimated annual billing.

(g) Interest on deposits. Each electric utility requiring deposits shall pay interest on these deposits at an annual rate at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code §183.003 (Vernon 1998) (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the electric utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(h) Notification to customers. When a deposit is required, the electric utility shall provide the applicant or customer written information about deposits by providing the "Your Rights as a Customer" brochure, which contains the relevant information.

(i) Records of deposits.

(1) The electric utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) The electric utility shall issue a receipt of deposit to each applicant paying a deposit and shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years.

(4) The electric utility shall make a reasonable effort to return unclaimed deposits.

(j) Guarantees of residential customer accounts.

(1) A guarantee agreement between an electric utility and a guarantor must be in writing and shall be for no more than the amount of deposit the electric utility would require on the applicant's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) The electric utility shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The electric utility shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the 16th day falls on a holiday or weekend, the due date shall be the next workday.

(B) The electric utility may transfer the amount owed on the defaulted account to the guarantor's own service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.25(c)(10) of this title (relating to the Issuance and Format of Bills).

(5) The electric utility may disconnect service to the guarantor for nonpayment of the guaranteed amount only if the disconnection was included in the terms of the written agreement, and only after proper notice as described by paragraph (4) of this

subsection, and §25.29(b)(5) of this title (relating to Disconnection of Service).

(k) Refunding deposits and voiding letters of guarantee.

(1) If service is not connected, or is disconnected, the electric utility shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided, or refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premise to another within the service area of the electric utility is not a disconnection, and no additional deposit may be required.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the electric utility shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee or provide written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.

(l) Re-establishment of credit. Every applicant who previously has been a customer of the electric utility and whose service has been disconnected for nonpayment of bills or theft of service (meter tampering or bypassing of meter) shall be required, before service is reconnected, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and reestablish credit. The electric utility must prove the amount of utility service received but not paid for and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of service restoration.

(m) Upon sale or transfer of utility or company. Upon the sale or transfer of any electric utility or any of its operating units, the seller shall provide the buyer all required deposit records.

§25.25. Issuance and Format of Bills.

(a) Frequency of bills. The electric utility shall issue bills monthly, unless otherwise authorized by the commission, or unless service is provided for a period less than one month. Bills shall be issued as promptly as possible after reading meters.

(b) Billing information. The electric utility shall provide free to the customer a breakdown of charges at the time the service is initially installed or modified and upon request by the customer as well as the applicable rate schedule.

(c) Bill content. Each customer's bill shall include all the following information:

(1) if the meter is read by the electric utility, the date and reading of the meter at the beginning and at the end of the billing period;

(2) the due date of the bill, as specified in §25.28 of this title (relating to Bill Payment and Adjustments);

(3) the number and kind of units metered;

(4) the applicable rate schedule and title or code should be provided upon request by the customer;

(5) the total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period;

(6) the word "Estimated" prominently displayed to identify an estimated bill;

(7) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill; and

(8) any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the electric utility as required by §25.24 of this title (relating to Credit Requirements and Deposits).

(d) Estimated bills.

(1) An electric utility may submit estimated bills for good cause provided that an actual meter reading is taken no less than every third month. In months where the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months when meters are not read, the electric utility must provide the customer with a postcard and request the customer to read the meter and return the card to the electric utility. If the postcard is not received by the electric utility in time for billing, the electric utility may estimate the meter reading and issue a bill.

(2) If an electric utility has a program in which customers read their own meters and report their usage monthly and no meter reading is submitted by a customer the electric utility may estimate the customer's usage and issue a bill. However, the electric utility must read the meter if the customer does not submit readings for three consecutive months so that a corrected bill may be issued.

(e) Record retention. Each electric utility shall maintain monthly billing records for each account for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. Copies of a customer's billing records may be obtained by that customer on request.

(f) Transfer of delinquent balances. If the customer has an outstanding balance due from another account in the same customer class, then the utility may transfer that balance to the customer's current account. The delinquent balance and specific account shall be identified as such on the bill.

§25.26. Spanish Language Requirements.

(a) Application. This section applies to each electric utility that serves a county where the number of Spanish speaking persons as defined in §25.5 of this title (relating to Definitions) is 2000 or more according to the most current U.S. Census of Population (Bureau of Census, U.S. Department of Commerce, Census of Population and Housing).

(b) Written plan.

(1) Requirement. Each electric utility shall have a commission-approved written plan that describes how a Spanish-speaking person is provided, or will be provided, reasonable access to the utility's programs and services.

(2) Minimum elements. The written plan required by paragraph (1) of this subsection shall include a clear and concise statement as to how the electric utility is doing or will do the following, for each part of its entire system:

(A) inform Spanish-speaking applicants how they can get information contained in the utility's plan in the Spanish language;

(B) inform Spanish-speaking applicants and customers of their rights contained in this subchapter;

(C) inform Spanish-speaking applicants and customers of new services, discount programs, and promotions;

(D) allow Spanish-speaking persons to request repair service;

(E) ballot Spanish-speaking customers for services requiring a vote by ballot;

(F) allow access by Spanish-speaking customers to services specified in subchapter F of this chapter (relating to Metering);

(G) inform its service and repair representatives of the requirements of the plan.

§25.28. Bill Payment and Adjustments.

(a) Bill due date. The bill provided to the customer shall include the payment due date which shall not be less than 16 days after issuance. The issuance date is the postmark date on the envelope or the issuance date on the bill if there is no postmark on the envelope. A payment for electric utility service is delinquent if not received at the electric utility or at the electric utility's authorized payment agency by the close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(b) Penalty on delinquent bills for retail service. A one-time penalty not to exceed 5.0% may be charged on a delinquent commercial or industrial bill. The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. An electric utility providing any service to the state of Texas shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(c) Overbilling. If charges are found to be higher than authorized in the utility's tariffs, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the utility corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the utility does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission each year.

(A) The interest rate shall be based on an average of prime commercial paper rates for the previous 12 months.

(B) Interest on overcharges that are not adjusted by the electric utility within three billing cycles of the bill in error shall accrue from the date of payment or from the date of the bill in error.

(C) All interest shall be compounded monthly based on the annual rate.

(D) Interest shall not apply to leveling plans or estimated billings.

(d) Underbilling. If charges are found to be lower than authorized by the utility's tariffs, or if the electric utility failed to bill the customer for service, then the customer's bill may be corrected.

(1) The electric utility may backbill the customer for the amount that was underbilled. The backbilling shall not collect charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.

(2) The electric utility may disconnect service if the customer fails to pay underbilled charges.

(3) If the underbilling is $50 or more, the electric utility shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(4) The utility shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer, as defined in §25.126 of this title. Interest on underbilled amounts shall be compounded monthly at the annual rate and shall accrue from the day the customer is found to have first stolen (tampered, bypassed or diverted) the service.

(e) Disputed bills.

(1) If there is a dispute between a customer and an electric utility about a bill for service, the electric utility shall investigate and report the results to the customer. If the dispute is not resolved, the electric utility shall inform the customer of the complaint procedures of the commission pursuant to §25.30 of this title (relating to Complaints).

(2) A customer's service shall not be disconnected for nonpayment of the disputed portion of the bill until the dispute is completely resolved by the electric utility.

(3) If the customer files a complaint with the commission, a customer's service shall not be disconnected for nonpayment of the disputed portion of the bill before the commission completes its informal complaint resolution process and informs the customer of its determination.

(4) The customer is obligated to pay any billings not disputed.

(f) Notice of alternate payment programs or payment assistance. When a customer contacts an electric utility and indicates inability to pay a bill or a need for assistance with the bill payment, the electric utility shall inform the customer of all alternative payment and payment assistance programs available from the electric utility, such as deferred payment plans, disconnection moratoriums for the ill, or energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each.

(g) Level and average payment plans. Electric utilities with seasonal usage patterns or seasonal demands are encouraged to offer a level or average payment plan.

(1) The payment plan may use one of the following methods:

(A) A level payment plan allowing residential customers to pay one-twelfth of that customer's estimated annual consumption at the appropriate customer class rates each month, with provisions for annual adjustments as may be determined based on actual electric use.

(B) An average payment plan allowing residential customers to pay one-twelfth of the sum of that customer's current month's consumption plus the previous 11 months consumption (or an estimate, for a new customer) at the appropriate customer class rates each month, plus a portion of any unbilled balance.

(2) If a customer for electric utility service does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the electric utility shall have the right to disconnect service to that customer pursuant to §25.29 of this title (relating to Disconnection of Service).

(3) The electric utility may require a customer deposit from all customers entering into level payment plans or average payment plans pursuant to the requirements §25.24 of this title (relating to Credit Requirements and Deposits). The electric utility shall pay interest on the deposit and may retain the deposit for the duration of the level or average payment plan.

(h) Payment arrangements. A payment arrangement is any agreement between the electric utility and a customer that allows a customer to pay the outstanding bill after its due date but before the due date of the next bill. If the utility issued a disconnection notice before the payment arrangement was made, that disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangements, the electric utility may disconnect service after the later of the due date for the payment arrangement or the disconnection date indicated in the disconnection notice, pursuant to §25.29 of this title without issuing an additional disconnection notice.

(i) Deferred payment plans. A deferred payment plan is any written arrangement between the electric utility and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. A deferred payment plan may be established in person or by telephone, and all deferred payment plans shall be put in writing.

(1) The electric utility shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two disconnection notices during the preceding 12 months.

(2) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments lasting at least three billing cycles.

(3) When a customer has received service from its current electric utility for less than three months, the electric utility is not required to offer a deferred payment plan if the customer lacks:

(A) sufficient credit; or

(B) a satisfactory history of payment for service from a previous utility.

(4) Every deferred payment plan offered by an electric utility:

(A) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the electric utility immediately and do not sign this contract. If you do not contact the electric utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the electric utility's failure or refusal to comply with the terms of this agreement." In addition, where the customer and the electric utility representative or agent meet in person, the electric utility representative shall read the preceding statement to the customer. The electric utility shall provide information to the customer in English and Spanish as necessary to make the preceding boldface language understandable to the customer;

(B) may include a 5.0% penalty for late payment but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid under the plan;

(E) shall state the specific amount of each installment;

(F) shall allow the electric utility to disconnect service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection;

(G) shall not refuse a customer participation in such a program on the basis of race, color, sex, nationality, religion, or marital status;

(H) shall be signed by the customer and a copy of the signed plan must be provided to the customer. If the agreement is made over the telephone, then the electric utility shall send a copy of the plan to the customer for signature; and

(I) shall allow either the customer or the electric utility to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(5) An electric utility may disconnect a customer who does not meet the terms of a deferred payment plan. However, the electric utility may not disconnect service until a disconnection notice has been issued to the customer indicating that the customer has not met the terms of the plan. The notice and disconnection shall conform with the disconnection rules in §25.29 of this title. The electric utility may renegotiate the deferred payment plan agreement prior to disconnection. If the customer did not sign the deferred payment plan, and is not otherwise fulfilling the terms of the plan, and the customer was previously provided a disconnection notice for the outstanding amount, no additional disconnection notice shall be required.

§25.29. Disconnection of Service.

(a) Disconnection policy. If an electric utility chooses to disconnect a customer, it must follow the procedures below, or modify them in ways that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection. Each electric utility is encouraged to develop specific policies for disconnection that treat its customers with dignity and respect its customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Disconnection is an option allowed by the commission, not a requirement placed upon the utility by the commission.

(b) Disconnection with notice. Electric utility service may be disconnected after proper notice for any of these reasons:

(1) failure to pay a bill for electric utility service or make deferred payment arrangements by the date of disconnection;

(2) failure to comply with the terms of a deferred payment agreement;

(3) violation of the electric utility's rules on using service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §25.24 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the electric utility has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(c) Disconnection without prior notice. Electric utility service may be disconnected without prior notice for any of the following reasons:

(1) where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the electric utility shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service was reconnected without authority after termination for nonpayment; or

(4) where there has been tampering with the electric utility company's equipment or evidence of theft of service.

(d) Disconnection prohibited. Electric utility service may not be disconnected for any of the following reasons:

(1) delinquency in payment for electric utility service by a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for non-electric utility service, including but not limited to insurance policies or home security systems, provided by the electric utility;

(3) failure to pay for a different type or class of electric utility service unless charges for such service were included on that account's bill at the time service was initiated;

(4) failure to pay charges arising from an underbilling, except theft of service, more than six months prior to the current billing;

(5) failure to pay disputed charges, except for the required average billing payment, until a determination as to the accuracy of the charges has been made by the electric utility or the commission and the customer has been notified of this determination;

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the electric utility is unable to read the meter due to circumstances beyond its control.

(e) Disconnection on holidays or weekends. Unless a dangerous condition exists or the customer requests disconnection, service shall not be disconnected on holidays or weekends, or the day immediately preceding a holiday or weekend, unless utility personnel are available on those days to take payments and reconnect service.

(f) Disconnection due to electric utility abandonment. No electric utility may abandon a customer or a certified service area without written notice to its customers and all similar neighboring utilities, and approval from the commission.

(g) Disconnection of ill and disabled. No electric utility may disconnect service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer must accomplish all of the following by the stated date of disconnection:

(A) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the electric utility by the stated date of disconnection;

(B) have the person's attending physician submit a written statement to the electric utility; and

(C) enter into a deferred payment plan.

(2) The prohibition against service termination provided by this subsection shall last 63 days from the issuance of the electric utility bill or a shorter period agreed upon by the electric utility and the customer or physician.

(h) Disconnection of energy assistance clients. No electric utility may terminate service to a delinquent residential customer for a billing period in which the electric utility receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

(i) Disconnection during extreme weather. An electric utility cannot disconnect a customer anywhere in its service territory on a day when:

(1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or

(2) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days.

(j) Disconnection of master-metered apartments. When a bill for electric utility services is delinquent for a master-metered apartment complex:

(1) The electric utility shall send a notice to the customer as required in subsection (k) of this section. At the time such notice is issued, the electric utility shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the electric utility shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric utility service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(k) Disconnection notices. Any disconnection notice issued by an electric utility to a customer must:

(1) not be issued before the first day after the bill is due, to enable the utility to determine whether the payment was received by the due date. Payment of the delinquent bill at the electric utility's authorized payment agency is considered payment to the electric utility.

(2) be a separate mailing or hand delivered with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed.

(3) have a disconnection date that is not a holiday or weekend day, not less than ten days after the notice is issued.

(4) be in English and in Spanish.

(5) include a statement notifying the customer that if they need assistance paying their bill by the due date, or are ill and unable to pay their bill, they may be able to make some alternate payment arrangement, establish deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the electric utility for more information.

§25.30. Complaints.

(a) Complaints to the electric utility. A customer or applicant may file a complaint in person, by letter, or by telephone with the electric utility. The electric utility shall promptly investigate and advise the complainant of the results within 21 days.

(b) Supervisory review by the electric utility. Any electric utility customer or applicant has the right to request a supervisory review if they are not satisfied with the electric utility's response to their complaint.

(1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review shall be made for the earliest possible date.

(2) Service shall not be disconnected before completion of the review. If the customer chooses not to participate in a review then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).

(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.

(c) Complaints to the commission.

(1) If the complainant is dissatisfied with the results of the electric utility's complaint investigation or supervisory review, the electric utility must advise the complainant of the commission's informal complaint resolution process. The electric utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512)936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail address: customer@puc.state.tx.us, internet address: www.puc.state.tx.us, TTY (512)936- 7136, and Relay Texas (toll-free) 1-800-735-2989.

(2) The electric utility shall investigate all complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the electric utility.

(3) The electric utility shall keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission- approved rates or charges which require no further action by the electric utility need not be recorded.

§25.31. Information to Applicants and Customers.

(a) Information to applicants. Each electric utility shall provide this information to applicants when they request new service or transfer existing service to a new location:

(1) the electric utility's lowest-priced alternatives available at the applicant's location, The information shall begin with the lowest-priced alternative and give full consideration to applicable equipment options and installation charges;

(2) the electric utility's alternate rate schedules and options, including time of use rates and renewable energy tariffs if available; and

(3) the customer information packet described in subsection (c) of this section. This is not required for the transfer of existing service.

(b) Information regarding rate schedules and classifications and electric utility facilities.

(1) Each utility shall notify customers affected by a change in rates or schedule of classifications.

(2) Each electric utility shall maintain copies of its rate schedules and rules in each office where applications are received.

(3) Each electric utility shall post a notice in a conspicuous place in each office where applications are received, informing the public that copies of the rate schedules and rules relating to the service of the electric utility, as filed with the commission, are available for inspection.

(4) Each electric utility shall maintain a current set of maps showing the physical locations of its facilities that includes an accurate description of all facilities (substations, transmission lines, etc.). These maps shall be kept by the electric utility in a central location and will be available for commission inspection during normal working hours. Each business office or service center shall have available up-to-date maps, plans, or records of its immediate service area, with other information as may be necessary to enable the electric utility to advise applicants, and others entitled to the information, about the facilities serving that locality.

(c) Customer information packets.

(1) The information packet shall be entitled "Your Rights as a Customer". Cooperatives may use the title, "Your Rights as a Member".

(2) The information packet, containing the information required by this section, shall be mailed to all customers on at least every other year at no charge to the customer.

(3) The information shall be written in plain, non-technical language.

(4) The information shall be provided in English and Spanish; however, an electric utility is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the utility is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the packet, that the information is available in Spanish from the electric utility, both by mail and at the electric utility's offices.

(5) The information packet shall include all of the following:

(A) the customer's right to information concerning rates and services and the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(B) the electric utility's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer;

(C) the time allowed to pay outstanding bills;

(D) grounds for disconnection of service;

(E) the steps that must be taken before an electric utility may disconnect service;

(F) the steps for resolving billing disputes with the electric utility and how disputes affect disconnection of service;

(G) information on alternative payment plans offered by the electric utility, including, but not limited to, deferred payment plans, level billing programs, average payment plans, as well as a statement that a customer has the right to request these alternative payment plans;

(H) the steps necessary to have service reconnected after involuntary disconnection;

(I) the customer's right to file a complaint with the electric utility, the procedures for a supervisory review, and right to file a complaint with the commission, regarding any matter concerning the electric utility's service. The commission's contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, internet address: www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

(J) the hours, addresses, and telephone numbers of electric utility offices and any authorized locations where bills may be paid and information may be obtained or a toll-free telephone number that would provide the customer with this information;

(K) a toll-free telephone number or the equivalent (such as WATS or collect calls) where customers may call to report service problems or make billing inquiries;

(L) a statement that electric utility services are provided without discrimination as to a customer's race, color, sex, nationality, religion, or marital status, and a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(M) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf at the commission;

(N) how customers with physical disabilities, and those who care for them, can identify themselves to the electric utility so that special action can be taken to inform these persons of their rights.

(O) the customer's right to have his or her meter tested without charge under §25.124 of this title (relating to Meter Testing);

(P) the customer's right to be instructed by the utility how to read his or her meter, if applicable;

(Q) a statement that funded financial assistance may be available for persons in need of assistance with their electric utility payments, and that additional information may be obtained by contacting the local office of the electric utility, Texas Department of Housing and Community Affairs, or the Public Utility Commission of Texas. The main office telephone number (toll-free number, if available) and address for each state agency shall also be provided; and

(R) information that explains how a residential customer can be recognized as a critical load customer, the benefits of being a critical load customer in an emergency situation, and the process for being placed on the critical load list. For the purposes of this section a "critical load residential customer" shall be defined as a residential customer who has a critical need for electric service because a resident on the premises requires electric service to maintain life.

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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Rules Coordinator
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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter B. Customer Service and Protection

16 TAC §§26.21-26.31

The Public Utility Commission of Texas (the commission) adopts new §26.21, relating to General Provisions of Customer Service and Protection Rules; new §26.22, relating to Request for Service; new §26.23, relating to Refusal of Service; new §26.24, relating to Credit Requirements and Deposits; new §26.25, relating to Issuance and Format of Bills; new §26.26, relating to Spanish Language Requirements; new §26.27, relating to Bill Payment and Adjustments; new §26.28, relating to Suspension or Disconnection of Service; new §26.29, relating to Prepaid Local Telephone Service (PLTS); new §26.30, relating to Complaints; and new §26.31, relating to Information to Applicants and Customers with changes to the proposed text as published in the December 11, 1998 *Texas Register* (23 TexReg 12584). These sections are adopted under Project Number 19517.

New §26.21 presents specific definitions for "customers," "applicants," and "days," and establishes that the purpose of the customer service and protection rules is to set a minimum standard for the provision of utility service. New §26.21 also provides that utilities may adopt less restrictive standards for differing groups of customers as long as they do not discriminate against protected groups. New §26.22 replaces §23.44(d) of this title (relating to New Construction). New §26.23 replaces §23.42 of this title (relating to Refusal of Service). New §26.24 replaces §23.43 of this title (relating to Applicant and Customer Deposit). New §26.25 replaces §23.45(a), (b), (c), and (e) of this title (relating to Billing). New §26.26 replaces §23.6 of this title (relating to Spanish Language Requirements). New §26.27 replaces §23.45(k), (l), (n), (o), and (p) of this title (relating to Billing). New §26.28 replaces §23.46 of this title (relating to Dis-

continuance of Service). New §26.29 replaces §23.40 of this title (relating to Prepaid Local Telephone Service). New §26.30 replaces §23.41(c) of this title (relating to Customer Relations). New §26.31 replaces §23.41(a) and (b) of this title (relating to Customer Relations).

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (§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 held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC), Chapter 23, to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 are proposed for repeal as each new section is proposed for publication in the new chapter. No one commented on the Section 167 requirement as to whether the reason for adopting rules continue to exist. The commission finds that the reason for adopting these rules continues to exist.

The commission specifically requested comments on whether the commission should change the provisions of §26.25(c)(4) to require more customer-friendly presentations of telephone bills and, if so, to suggest changes.

The commission received written comments on the proposed rules from seven Public Interest (PI) groups (joint comments for Consumers Union (CU) Southwest Regional Office, Texas Ratepayers' Organization to Save Energy (ROSE), Texas Legal Services Center, Public Citizen, Texas Office, Gray Panthers, Texas, Texas Citizen Action, and Texas Alliance for Human Needs); GTE Southwest, Inc. (GTE); AT&T Communications of the Southwest, Inc. (AT&T); the Office of Public Utility Counsel (OPC); Southwestern Bell Telephone Company (SWB); Texas Statewide Telephone Cooperative, Inc. (TSTCI); Texas Association of Long Distance Telephone Companies (TEXALTEL); and Texas Telephone Association (TTA). The commission also received reply comments from AT&T, TSTCI, GTE, PI, and the Center for Economic Justice (CEJ).

A public hearing on the proposed rules was held at the commission offices on February 9, 1999, at 9:00 a.m. Representatives from the South Plains Community Action Agency (SPCAA), Texas Legal Services Center, Texas ROSE, SWB, and TTA offered oral comments at the public hearing. Also attending the pubic hearing were representatives from OPC, GTE, GVNW, Inc., Sprint, UDP, Inc., CU, AT&T, TSTCI, Big Bend Telephone Company, and Eastex Telephone Cooperative, Inc.

Major issues

The telecommunications industry commenters strongly opposed the proposed rule changes that would sever the link between local telephone service and unrelated charges including long distance charges. The proposed rules would allow disconnection of local service for nonpayment of local services charges only (§26.28(d)(1)), prohibit refusal of service for failure to pay anything other than local telephone service (§26.23(c)(2)), and require that the deposit amount be based on local service charges only (§26.24(f)(1)). Most of the telecommunications industry commenters indicated that the commission has reviewed the policy that permits consideration of long distance charges in initiation of service, deposits, and disconnection practices on several occasions in recent years and has not changed existing policy. The commission declined to prohibit disconnections of local service because of nonpayment of long distance charges and instead created Prepaid Local Telecommunications Service (PLTS) (§23.40). Commenters fear the proposed rule changes would destroy the balance of interests carefully crafted by the commission in creating PLTS. They believe there is no basis for changing a policy in existence since the creation of the commission in 1975.

SWB, GTE, and TSTCI commented that the proposed changes unfairly single out the incumbent local exchange companies (ILECs) for additional regulation that increases costs, does not ensure affordable basic telephone service in a competitively neutral manner, and does not foster market competition. The commenters indicated that the proposed rule changes would result in inherent competitive inequalities since they apply to an ILEC but not to a competitive local exchange company (CLEC). The commenters suggested that the commission should hold the rule changes in abeyance and convene a workshop with industry representatives to specifically address this issue. SWB commented that the proposed rule changes would be a contravention of the Public Utilities Regulatory Act (PURA) §58.025, which precludes changes to the "rates" of a utility that elects incentive regulation. SWB stated that the term "rates" is broadly defined in PURA §11.003(15) to include any rule, practice, or contract affecting such compensation, tariff, etc.

GTE stated that the proposed rule changes are sweeping in nature and would require costly and inefficient modifications to billing and customer service automated systems. SWB indicated that difficulties in making the necessary systems modifications would be further compounded by the Y2K problem. GTE further commented that the proposed changes would harm customers by increasing bad debts that will be borne by all ratepayers and increase pressure to shift billing and collection to unregulated third parties.

AT&T and TEXALTEL commented that long distance companies are dependent on LECs for billing casual calls (i.e., dial around and collect calls) and that the expense of collecting these charges by means other than the LEC is prohibitive. AT&T commented that in Project Number 12334 it was noted that prohibiting disconnection of local service for nonpayment of long distance charges would increase uncollectible expenses by $134-$179 million per year.

PI commented that the proposed rule changes represent a significant improvement in customer protection by prohibiting disconnection of local service for nonpayment of unrelated charges and will put customers on an equal footing with slammers and crammers. OPC supported the PI position and recommended that utilities be required to inform the public of the new commission policy on disconnections. CEJ provided comments indicating that the current disconnection policy has no legal basis. In their reply comments, AT&T and GTE

disagreed with PI that these proposed changes will improve the situation for slamming and cramming since the commission has separate rules that address those problems. TSTCI stated that the PLTS rule addresses the concerns of PI.

The commission agrees that it is appropriate to monitor the effectiveness of PLTS over a longer period of time and has asked LECs to submit information on PLTS usage. It also notes that cramming complaints have decreased, at least temporarily, because of actions taken by the LECs against problem billing and collection clients. Therefore, the commission does not adopt the proposed rule changes and retains the current policy on disconnections, referrals of service, and deposits. Proposed §26.28(d)(1), §26.23(c)(2), and §26.24(f)(1) are modified accordingly. However, the commission will monitor PLTS as well as changes in the industry and may revisit this issue in the future.

SWB commented that 35% of its customers pay late and that a late payment fee for residential service is needed. GTE agreed with SWB stating that a late payment penalty is necessary, permissible, and timely. PI and CEJ strongly opposed a late payment penalty for residential service. PI commented that there is no cost basis for imposing a penalty and that it would be contrary to the law governing electing LECs. The expenses of billing and collection are already included in the basic local telecommunications service rates, which are capped for electing companies. This would result in excess profits for dominant carriers. PI further stated that this would provide greater incentive to impose fees rather than work with the customers experiencing bill payment problems. CEJ commented that the 5.0% late pay fee on deferred payment plans should be applied only to basic local telephone service.

The commission agrees with the arguments against permitting a late payment penalty for residential service and retains the current policy that allows a late payment penalty only for nonresidential service. Accordingly, §26.27(b) is revised to reflect this change to the proposed rule.

Other issues

§26.21. General Provisions of Customer Service and Protection Rules.

SWB recommended adding "former customer" to the definition for "Applicant" in subsection (c)(1). TEXALTEL recommended deleting "for the first time or reapplies" from the definition for "Applicant." The commission agrees that the definition requires clarification and revised it as follows: "Applicant - A person who applies for service for the first time or reapplies after disconnection of service."

§26.22. Request for Service.

SWB recommended deleting the requirement to inform applicants as part of the initial contact about the right to file a complaint with the commission (§26.22(7)). SWB commented that this information is already required in §26.31(c), "Your Rights as a Customer," that requiring this information during the initial contact would not leave a positive impression on many applicants and that it would leave the impression that an ILEC offers an inferior service since a CLEC is not required to "warn" a prospective customer. PI stated that it is a benefit to all residential ratepayers to be informed of the commission's role in customer protection. It further stated that the rule could benefit applicants without being a detriment to utility operations by including a simple statement (e.g., "If you think you have been treated unfairly, you have the right to file a complaint with the PUC.")

The commission believes that the utility should provide the applicant a copy of the "Your Rights as a Customer" brochure and inform the applicant of the complaint process if the applicant thinks the applicant has been treated unfairly and revises proposed §26.22(7) accordingly.

§26.23. Refusal of Service.

TTA recommended adding the language in the current §23.42(b) to §26.23(a) indicating that a utility may decline to provide service until the applicant complies with state and municipal regulations and the utility's rules and regulations on file with the commission. The commission agrees with this recommendation and revises §26.23(a) accordingly.

TEXALTEL suggested adding to §26.23(a)(3) that the guarantee complied with the commission's rules at the time it was executed. The commission believes that the suggested change is unnecessary.

SWB recommended a minor change to §26.23(a)(4) by replacing "another customer" with "a customer." SWB stated that sometimes the same customer applies under another name and that the proposed change would preclude an applicant with the intent to deceive from arguing that the rule did not apply to him or her. The commission believes that clarification is required. §26.23(a)(4) is revised to clearly state that service may be refused if there is a change of applicant or customer identity to avoid or evade payment of a utility bill. The commission also adds §26.23(c)(4) to indicate that service shall not be refused for failure to pay the bill of another customer at the same address except where the change in identity is made to avoid or evade payment of a utility bill.

As previously discussed, the telecommunications industry strongly opposed proposed rule §26.23(c)(2), which would prohibit refusal of service for failure to pay for anything other than local telephone service. The commission revises §26.23(c)(2) to indicate that refusal of service is prohibited for failure to pay for any charges that are not in a utility's tariffs.

§26.24. Credit Requirements and Deposits.

PI supported the provision in §26.24(a)(1)(B), which replaces "reasonable time" in the current §23.43(b)(1) with a 12-month period for application of credit histories of former spouses. PI indicated that the change makes the standard clear for both the customer and the utility. SWB recommended deleting §26.23(a)(1)(B), stating that the rights of spouses before or after divorce should be left to the courts and that the complaint process should be used to handle credit history disputes. TTA stated that the reference to "shared service" in the current §23.43(b)(1) was omitted from proposed §26.24(a)(1)(B) and that without this reference the rule could lead to inequitable results. The commission agrees with TTA that "shared service" should be added to §26.24(a)(1)(B) and revises the rule accordingly.

GTE commented that proposed §26.24(a)(2) requires clarification to ensure the application of credit criteria is clearly stated. The commission revises §26.24(a)(2) to delete the word "any."

Proposed §26.24(a)(2)(A)(iii) included the phrase, "during the last 12 consecutive months of service was not late in paying a bill." This language is inconsistent with that in the current §23.43(b)(3)(A). The commission did not intend to change

the current credit requirements for residential applicants by requiring a perfect payment record. The commission revises that part of §26.24(a)(2)(A)(iii) as follows: "...during the last 12 consecutive months of service was not late in paying a bill more than once."

Proposed §26.24(a)(2)(A)(v) required that a residential applicant obtain a letter of credit history from the applicant's previous utility. GTE recommended deleting this requirement, stating that it is was ambiguous, redundant, and impractical. GTE further commented that if the other four criteria were met, a utility letter of credit was unnecessary. GTE also expressed concern that many utilities will not provide such letters due to issues of confidentiality. The commission agrees that obtaining a letter of credit history from the applicant's previous utility should not be a requirement for establishing credit. However, instead of deleting §26.24(a)(2)(A)(v), the commission maintains its existing rule language indicating that applicants are encouraged to obtain a letter of credit history from their previous utility, and utilities are encouraged to provide such information with final bills.

GTE commented that §26.24(c)(2) should be for residential customers only and that this rule conflicts with §26.24(b). The commission does not agree with GTE. The provisions of §26.24(c)(2) may be used to require an initial deposit from a residential or commercial customer. Furthermore, §26.24(c)(2) is not in conflict with §26.24(b) since §26.24(c)(2) applies to existing customers while §26.24(b) applies to non-residential applicants.

SWB proposed deleting the 12-month limitation from all of the provisions for requesting additional deposits in §26.24(d)(1), stating that the limitation is arbitrary. The commission believes that the 12-month limitation should apply to the provisions of §26.24(d)(1)(A), but should not apply to the provisions of §26.24(d)(1)(B). The provisions of §26.24(d)(1)(A) may be used to require an additional deposit based exclusively on increased usage and should be limited to the first 12 months of service. The provisions of §26.24(d)(1)(B) may be used to require an additional deposit based on increased usage and poor payment history and should not be limited to the first 12 months of service. The commission revises §26.24(d)(1) and §26.24(d)(1)(A) accordingly.

GTE commented that the proposed rule bifurcated the provisions of additional deposits between residential and business customers, but that the disconnection provision was omitted from the business section. GTE recommended that the language in §26.24(d)(1)(E) should be duplicated as a new provision, §26.24(d)(2)(C). The commission agrees that the disconnection provision should also apply to additional deposits for non-residential service and adopts the change recommended by GTE.

The telecommunications industry strongly opposed the provision in §26.24(f)(1) that the determination of the deposit amount shall be based only on charges related to local telephone service. GTE stated that this provision would create a major problem for business accounts. TSTCI commented that this provision would have an adverse impact on small companies. The commenters recommended that long distance charges be allowed in calculating a deposit amount when the LEC's tariff provides for billing for the interexchange carrier. The commission revises §26.24(f)(1) based on the language in the current §23.43(e)(1) as indicated in the previous discussion about local service and long distance charges.

SWB recommended deleting §26.24(f)(2), which states that in determining the amount of the deposit, no revenue from estimated telephone directory advertising may be used. The commission agrees that there is no need to identify one specific charge that is not allowed and revises proposed §26.24(f)(2) to indicate that no revenue from non-tariffed products or services may be used to determine the deposit amount.

SWB also suggested eliminating §26.24(h), which requires the utility to provide written information to customers about deposits when a deposit is required. SWB stated that deposit information is already included in the "Your Rights as a Customer" information. The commission agrees in part and revises the rule to require that this brochure be given to the customer to explain the deposit.

TTA recommended that §26.24(i)(4) be updated to indicate that certain unclaimed monies go to a scholarship fund and not to the Office of Comptroller of Public Accounts. The commission deletes the escheat provision in §26.24(i)(4).

§26.24(j)(4)(A) states that the utility shall allow a guarantor 16 days from the date of notification to pay the amount owed on a defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next workday. GTE commented that its billing systems cannot modify the due date to exclude holidays and weekends. GTE recommended deleting the requirement to modify the due date. The commission does not agree with GTE. The guarantor is entitled to know the actual due date when payment is required, and the utility should ensure that the actual date appears in the notice to the guarantor.

§26.25. Issuance and Format of Bills.

PI commented that the FCC is currently reviewing the form and content of telecommunications bills (CC Docket Number 98-170). PI added that confusion over telephone bills contributes to the growth in telecommunications fraud, such as slamming and cramming. PI recommended the following minimum information be required on a customer's telecommunications bill: (1) current service recapitulation; (2) conspicuous notice of any change in services or providers; (3) bills organized by provider; (4) services not related to local or pre- subscribed long distance have disclosures mandated by the revised Telephone Disclosure and Dispute Resolution Act (TDDRA '92); and (5) identify explicitly both services rendered and the service providers.

TTA commended the commission's efforts to encourage clear and understandable telephone bills. However, TTA believes it is premature to overhaul the billing process without an opportunity for the industry to work through the difficulties in amending the industry's billing system. TTA is concerned that there could be serious and unintended consequences. TTA recommended that this rule-making be held in abeyance for more input from the public and the industry. GTE urged that the commission seek more information from the industry on the potential ramifications of any additional proposals related to billing format and content. GTE commented that bill format and content options can be a competitive differentiator in the marketplace and urged the commission not to over-regulate the process.

TTA suggested that an industry analysis may be appropriate to determine whether a substantial modification of industry billing

systems would be required to post actual due dates on bills as required by proposed §26.25(c)(4)(B).

GTE and TTA recommended modifying "collected from all customers" in proposed §26.25(c)(4)(G) since some charges do not apply to all customers. GTE and TTA objected to the requirement in proposed §26.25(c)(4)(K) that each bill concisely state the nature or purpose of the tax, fee, or charge if not immediately obvious. GTE commented that this requirement is ambiguous and, if implemented, would actually increase customer confusion. GTE stated that line items on a bill are limited by the number of characters that can be used. GTE further indicated that explanations of particularly critical surcharges are often accompanied by required bill messages for a period of time to educate customers (e.g., Texas USF).

Proposed §26.25(c)(4)(G) clarifies current §23.45(g)(1)(B)(vii) by requiring a separate line item on a bill for only those charges mandated by a governmental agency that are to be specifically collected from customers (e.g., subscriber line charge). There is no legal requirement to specifically charge customers for many separately listed items currently being collected from customers (e.g., federal universal service, number portability, and Telecommunications Infrastructure Fund Assessment). The commission revises proposed §§26.25(c)(4)(G) and 26.25(c)(4)(K) based on the comments provided by the parties. The commission believes it should not make any other changes to the bill format and content until the FCC completes its review or the commission conducts an in-depth analysis.

§26.26. Spanish Language Requirements.

PI recommended that proposed §26.26(a) be updated to refer to the most current U.S. Census rather than the 1990 Census. The commission agrees and revises §26.26(a) accordingly.

§26.27. Bill Payment and Adjustments.

PI suggested reinstating the language in the current §23.45(b) in proposed §26.27(a), indicating that the date of issuance is the postmark on the envelope or the issuance date on the bill if there is no postmark on the envelope. GTE, TTA, and AT&T commented that billing systems are unable to adjust the due date on bills to exclude holidays and weekends. They recommended modifying proposed §26.27(a) to indicate that if the sixteenth day falls on a holiday or weekend, an allowance should be made for payments to be received the next workday.

The commission agrees with the recommendation to add language about the issuance date in §26.27(a). The commission does not agree with modifying the rule with regard to the due date on the bill. The customer is entitled to know the actual date that payment is due. The commission further notes that the requirement to show the actual due date on the bill is not new. The new §26.27(a) more clearly states the requirement that was already in the current §23.45(b).

SWB recommended limiting overbilling corrections to four years in §26.27(d)(1). SWB commented that the purpose of their proposed change was to restore symmetry between the overbilling and underbilling subsections of the rule and to be consistent with the general statute of limitations on civil actions in Texas. PI disagreed with limiting rate adjustments to customers to four years. Since it is the utility and not the customer who is at fault, the utility should fully compensate the customer. The commission believes that a customer should be fully compensated for any overbilling charges. Thus, no change is made to §26.27(d)(1).

GTE and TTA recommended using the language in current §23.45(h) in §26.27(e)(1) that would allow backbilling for more than six months. SWB recommended allowing backbilling for up to 12 months. SWB stated again that the purpose for this change was to restore symmetry between the overbilling and underbilling subsections of the rule. PI opposed extending the time period for backbilling, stating that customers deserve accurate bills and allowing extended backbilling does not provide the proper incentive to companies to control the quality of their operations.

The commission adopts the six-month limit on backbilling as stated in §26.27(e)(1). Since undercharges are the result of a utility error, a six-month limit is reasonable. The commission notes that while the current §23.45(h) allowed backbilling for more than six months, the rule also prohibited disconnection of service for nonpayment of underbilled charges that exceeded six months.

SWB recommended deleting "that is the result of theft of service" from proposed §26.27(e)(2) since there is no basis for limiting disconnection of service to the context of theft of service. The commission did not intend to limit disconnection to theft of service and revises §26.27(e)(2) accordingly.

PI commented that there appears to be a gap in proposed §26.27(f)(2) that may allow a disconnection of service during the time between when the utility notifies the customer of the outcome of its investigation and the time the customer files a complaint with the commission. GTE, TSTCI, and TTA expressed concern that proposed §26.27(f)(2) omits the language in current §23.45(j)(3), which allows disconnection for nonpayment of disputed bills after 60 days. The commenters stated that without the 60-day limit disputes could be prolonged, and there would not be an obligation on the customer and the commission to pursue a quick solution. TSTCI recommended reinstating the language in current §23.45(j)(3) in proposed §26.27(f)(2) that the customer is obligated to pay the undisputed amount.

The commission makes several revisions to the paragraphs in §26.27(f) to differentiate between utility disputes and commission complaints and to clearly indicate that the customer is obligated to pay the undisputed portion of the bill. However, the commission does not agree with imposing a 60-day limit on the disconnection moratorium pending dispute resolution. The commission expects that the vast majority of disputes will be resolved within 60 days. In those few cases that require additional time, it would not be appropriate to disconnect service until there is a final resolution of the dispute. The commission does not believe that lifting the 60-day limit will provide an incentive to prolong the dispute resolution process. It may well have the opposite effect.

Proposed §26.27(f)(3) stated that service shall not be disconnected for nonpayment of disputed charges not related to local service. GTE, TSTCI, and TEXALTEL recommended deleting proposed §26.27(f)(3) since §26.27(f)(2) already prohibits disconnection for any disputed charges. The commission agrees and replaces the proposed §26.27(f)(3) with clarifying language.

PI supported the requirement in §26.27(i) that deferred payment plans must be in writing. GTE and TTA objected to this requirement stating that this would result in an administrative nightmare. GTE recommended that deferred payment plans should be in writing only upon customer request. AT&T urged

the commission to continue the current practice of allowing oral deferred payment plans.

The commission is convinced that deferred payment plans should be in writing. This is not a new requirement. The current §23.45(d)(7) required that deferred payment plans be in writing whether the agreement was reached at the utility's business office or by phone. The commission does not require that every payment agreement between a customer and the utility be in writing. Payment arrangements that permit payment of a bill sometime before the due date of the next bill do not have to be in writing (§26.27(h)). An agreement calling for installment payments qualifies as a deferred payment plan and must be in writing.

GTE proposed changing "customer" to "residential customer" in proposed §26.27(i)(3). Since the deferred payment plan provisions apply only to residential service, the commission agrees with GTE and revises §26.27(i)(3) accordingly.

§26.28. Suspension or Disconnection of Service.

PI strongly agreed with the statement in §26.28(a) that disconnection is an option and not a requirement.

TSTCI proposed adding a provision under §26.28(c) that would allow disconnection without notice when there is an intent to deceive by a customer. TSTCI recommended using similar language to that used for refusal of service to applicants in §26.23(a)(4). TSTCI cited a situation where a customer used a false name to obtain service and the utility found this out after providing service. TSTCI stated that in this situation the utility should be allowed to disconnect service without notice.

The commission does not agree that an additional provision under §26.28(c) is required. The situation cited by TSTCI can be remedied by immediately issuing a disconnection notice to the customer. If the customer does not pay the outstanding amount owed within 10 days, then the customer's service may be disconnected.

SWB recommended changing §26.28(d)(3) to prohibit disconnection of service for failure to pay an underbilling exceeding 12 months instead of six months. The commission does not agree with the proposed change. As previously discussed, a six-month period for backbilling is reasonable and should not be extended.

SWB recommended placing a 45-day limit on the disconnection prohibition for disputed charges. The commission does not believe an arbitrary time period should be adopted. There should be no disconnection for disputed charges until a final determination is made on the accuracy of the charges.

TEXALTEL proposed modifying §26.28(g) to allow toll blocking and other sensitive usage blocking in conjunction with the disconnection prohibition for ill and disabled customers. The commission does not agree that the proposed change is necessary.

Because local telephone service is a necessity to many persons with health problems, a new requirement, §26.28(g), adds a disconnection exemption for the ill and disabled which mirrors the exemption for customers of electric utilities. PI recommended amending §26.28(g)(2) to allow more than 63 days for the ill and disabled disconnection prohibition and to require the utility to refer the customer to health and human service providers. GTE opposed both proposed changes. The commission believes the provisions in §26.28(g) for the ill and disabled provide sufficient safeguards and do not require modification.

SWB proposed adding the language in §26.28(e) to §26.28(h)(3) and amending §26.28(h)(4) to state that the Spanish language requirement on a disconnection notice would apply only if the customer has a Spanish surname. The commission does not believe either proposal is appropriate.

§26.29. Prepaid Local Telephone Service (PLTS).

SWB proposed amending §26.29(e)(4) to allow a utility to require in a deferred payment plan any charges under the utility's tariff including long distance charges. The commission does not agree with changing the current PLTS provision that limits charges that may be included in a deferred payment plan to local basic service.

GTE recommended replacing "for these reasons" with "for any of the following reasons" in proposed §26.29(e)(6)(A) and adding "as stated in those tariffs" to proposed §26.29(h)(1)(A). The commission agrees with both clarifications and amends the rules accordingly.

§26.30. Complaints.

GTE, SWB, TSTCI, TTA, and AT&T commented that the requirement in proposed §26.30(a) that the utility complete an investigation of a customer complaint within 15 calendar days is unreasonable. The commenters stated that additional time is required to contact the customer and to make a correct determination on the merits of the complaint. TSTCI stated that the required time frame is particularly difficult for small companies with limited staff. GTE proposed the rule be amended to allow 20 workdays. SWB, TSTCI, and TTA proposed the rule allow 30 calendar days to complete an investigation. SWB also proposed amending §26.30(a) to replace "complaint" with "complaint regarding the accuracy of his/her monthly bill."

The commission believes that while most complaints can be resolved within 15 calendar days, additional time is required for others. The commission amends proposed §26.30(a) to state that the utility shall investigate and advise the complainant of the results within 21 calendar days. The commission does not agree with the proposal to limit complaints to those related to billing accuracy.

GTE and SWB commented that the requirement in §26.30(c)(2) that the utility complete an investigation of a commission complaint within 15 calendar days is unreasonable. GTE proposed amending §26.30(c)(2) to allow 20 workdays to resolve complaints filed with the commission. SWB recommended retaining the 30-day period for investigating commission complaints. SWB indicated that if the commission shortens the time limit for the utility to respond to a complaint, then it proposed the time limit be changed to 15 business days rather than 15 calendar days. SWB also recommended adding to the rule that upon receipt of the utility's response, the commission shall issue its written analysis of the complaint within 15 calendar days.

The Legislature places a high value on prompt resolution of complaints as evidenced by a commission performance measure. Also, electronic communication should shorten the time for sending complaints and receiving responses. Therefore, the commission extends the time allowed for a utility investigation of a commission complaint from 15 calendar days to 21 calendar days.

§26.31. Information to Applicants and Customers.

PI proposed amending §26.31(a)(1) to require utilities to describe any options using standardized terms and pricing to enable consumers to easily compare. In its reply comments, GTE opposed PI's recommendation, contending that this would result in micro-management of utilities' business practices. GTE further indicated that proposed §26.31 and current §23.41(b) already provide extensive detail on the manner and scope of customer communications and additional requirements are unnecessary and contrary to the spirit of a competitive marketplace. The commission does not believe that it would be appropriate at this time to require standardized terms and pricing because of other truth-in-billing efforts underway.

Section 26.31(b)(2) requires each utility to maintain copies of its rates and tariff in each office where applications are received. SWB commented that the rule would impose unreasonable costs and burdens and recommended replacing "each office" with "at least one office per exchange." The commission does not agree that the proposed amendment is necessary. The requirement in §26.31(b)(2) is not new; it is currently in §23.41(b)(4).

All comments, including any not specifically referenced herein, were fully considered by the commission. Where appropriate, non-substantive clarifications identified in Project Number 19513, *Transfer of Existing Electric Utility Customer Service and Protection Rules to New Chapter 25 and Associated Changes* are applied to these rules. The commission also makes other minor changes for clarification.

AT&T recommended several changes to the preamble to more accurately reflect the commission's statutory authority. The commission made appropriate revisions to the preamble.

These new sections are 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 specifically, §§52.002, 52.102, and 52.152 which allow the commission to regulate telecommunication utility operations and services; §52.109 which grants the commission authority to require a telecommunications utility to make service available within a reasonable time after receipt of a bona fide request for service; §53.001 which authorizes the commission to establish and regulate rates of a public utility; §54.101 and §54.151 which require certificate holders to provide continuous and adequate service in their service areas; §55.001 which requires public utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §55.002 which grants the commission authority to adopt just and reasonable standards, classifications, rules, or practices a public utility must follow, to adopt adequate and reasonable standards for measuring a condition, including quantity and quality relating to the furnishing of service, to adopt reasonable rules for examining, testing, and measuring a service, and adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure service.

Cross-Index to Statutes: Public Utility Regulatory Act §§14.002, 52.002, 52.102, 52.152, 52.109, 53.001, 54.101, 54.151, 55.001, and 55.002

§26.21. General Provisions of Customer Service and Protection Rules.

(a) Application. Unless the context clearly indicates otherwise, in this subchapter the terms "utility" and "public utility," as they relate to telecommunications utilities, shall refer to dominant carriers.

(b) Purpose. The purpose of the rules in this subchapter is to establish minimum customer service standards that utilities must follow in providing telephone service to the public. Nothing in these rules should be interpreted as preventing a utility from adopting less restrictive policies for all customers or for differing groups of customers, as long as those policies do not discriminate based on race, nationality, color, religion, sex, or marital status.

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

(1) Applicant–A person who applies for service for the first time or reapplies after discontinuance of service.

(2) Customer–A person who is currently receiving service from a utility in the person's own name or the name of the person's spouse.

(3) Days–Unless the context clearly indicates otherwise, in this subchapter the term "days" shall refer to calendar days.

§26.22. Request for Service.

Every public utility shall initiate service to each qualified applicant for service within its certificated area in accordance with this section.

(1) Applications for new telephone service shall be filed in accordance with §23.61(e) of this title (relating to Telephone Utilities) as it concerns service objectives and surveillance levels.

(2) A utility may require a residential applicant for service to satisfactorily establish credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills.

(3) Requests for new residential telephone service requiring construction, such as line extensions shall be completed within 90 days or within a time period agreed to by the customer and utility if the applicant has met the credit requirements as provided for in §26.24 of this title; made satisfactory payment arrangements for construction charges; and has complied with all applicable state and municipal regulations. A telephone "drop" wire less than 300 feet in length which connects the utility distribution facility to the customer premises is not considered a line extension. For this section, facility placement which requires a permit for a road or railroad crossing will be considered a line extension.

(4) If facilities must be constructed, then the utility shall contact the customer within ten working days of receipt of the application and give the customer an estimated completion date and an estimated cost for all charges to be incurred by the customer.

(5) Following the assessment of necessary line work, the utility shall explain any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants.

(6) Unless the delay is beyond the reasonable control of the utility, a delay of more than 90 days shall constitute failure to serve under the Public Utility Regulatory Act §54.008, unless the customer and utility have agreed to a longer term. The commission may revoke or amend a utility's certificate of convenience and necessity (or other certificate) for such failures to service, or grant the certificate to another utility to serve the applicant, and the utility may be subject

to administrative penalties pursuant to the Public Utility Regulatory Act §15.023 and §15.024.

(7) As part of the initial contact, utility employees shall provide the applicant a copy of the "Your Rights as a Customer" brochure, and inform an applicant of the right to file a complaint with the commission in accordance with §26.30 of this title (relating to Complaints) if the applicant thinks the applicant has been treated unfairly.

§26.23. Refusal of Service.

(a) Acceptable reasons to refuse service. A utility may refuse to serve an applicant until the applicant complies with state and municipal regulations and the utility's rules and regulations on file with the commission or for any of the reasons identified below.

(1) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given or the applicant's facilities do not comply with all applicable state and municipal regulations.

(2) Violation of utility's tariffs. The applicant fails to comply with the utility's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments which interfere with the service of others. The utility shall provide the applicant notice of such refusal and afford the applicant a reasonable amount of time to comply with the utility's tariffs.

(3) Failure to pay guarantee. The applicant has acted as a guarantor for another customer and fails to pay the guaranteed amount, where such guarantee was made in writing to the utility and was a condition of service.

(4) Intent to deceive. The applicant applies for service at a location where another customer received, or continues to receive, service and the utility bill is unpaid at that location and the utility can prove that the change in identity is made to avoid or evade payment of a utility bill. An applicant may request a supervisory review as specified in §26.30 of this title (relating to Complaints) if the utility determines that the applicant intends to deceive the utility and refuses to provide service.

(5) For indebtedness. Except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service), service may be refused, if the applicant owes a debt to any utility for the same kind of service as that applied for, including long distance charges where a local exchange carrier bills those charges to the customer pursuant to its tariffs. If the applicant's indebtedness is in dispute, the applicant shall be provided service upon complying with the deposit requirement in §26.24 of this title (relating to Credit Requirements and Deposits). Payment of long distance charges shall not be a condition of local exchange service if federal authority prohibits payment of long distance charges as a condition for local service, or prohibits disconnection of local service for failure to pay long distance charges.

(6) Refusal to pay a deposit. Refusing to pay a deposit if applicant is required to do so under §26.24 of this title.

(b) Applicant's recourse.

(1) If a utility has refused to serve an applicant under the provisions of this section, the utility must inform the applicant of the reason for its refusal and that the applicant may file a complaint with the commission as described in §26.30 of this title.

(2) Additionally, the utility will inform applicants eligible for Prepaid Local Telephone Service, under §26.29 of this title, that this service is available if they are not eligible for standard local telephone service.

(c) Insufficient grounds for refusal to serve. The following are not sufficient cause for refusal of service to an applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay for any charges that are not provided for in a utility's tariffs;

(3) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service; and

(4) failure to pay the bill of another customer at the same address except where the change in identity is made to avoid or evade payment of a utility bill.

§26.24. Credit Requirements and Deposits.

(a) Credit requirements for permanent residential applicants.

(1) A utility may require a residential applicant for service to establish and maintain satisfactory credit as a condition of providing service.

(A) Establishment of credit shall not relieve any customer from complying with the utility's requirements for prompt payment of bills.

(B) The credit worthiness of spouses established during the last 12 months of shared service prior to their divorce, will be equally applied to both spouses for 12 months immediately after their divorce.

(2) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (C) of this paragraph.

(A) The residential applicant:

(i) has been a customer of any utility for the same kind of service within the last two years;

(ii) is not delinquent in payment of any utility service account;

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once;

(iv) did not have service disconnected for nonpayment; and

(v) is encouraged to obtain a letter of credit history from the applicant's previous utility. Utilities are encouraged to provide such information with final bills.

(B) The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(i) generally acceptable credit cards;

(ii) letters of credit reference;

(iii) the names of credit references which may be quickly and inexpensively contacted by the utility; or

(iv) ownership of substantial equity that is easily liquidated.

(C) The residential applicant is 65 years of age or older and does not have an outstanding account balance incurred within the

last two years with the utility or another utility for the same type of utility service.

(3) If the applicant does not demonstrate satisfactory credit using these criteria, the applicant may be required to pay a deposit pursuant to subsection (c) of this section.

(b) Credit requirements for non-residential applicants. If an applicant's credit for service has not been demonstrated satisfactorily to the utility, the applicant may be required to pay a deposit.

(c) Initial deposits.

(1) A residential applicant or customer who is required to pay an initial deposit may provide the utility with a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit.

(2) An initial deposit may not be required from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(d) Additional deposits.

(1) Residential Customers.

(A) During the first 12 months of service, the utility may request an additional deposit from a residential customer. To require the deposit, the customer's actual usage must:

(i) be three times estimated usage (or three times average usage of most recent three bills);

(ii) exceed $150; and

(iii) exceed 150% of the security held.

(B) An additional deposit may also be required if:

(i) actual billings of a residential customer are at least twice the amount of the estimated billings after two billing periods; and

(ii) a suspension or disconnection notice has been issued for the account within the previous 12 months.

(C) An additional deposit may be required to be paid within ten days after issuing written notice of suspension or disconnection and requested additional deposit

(D) Instead of additional deposit, the customer may elect to pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(E) The utility may disconnect service if the additional deposit or the current usage payment is not paid within ten days of request provided a written suspension or disconnection notice has been issued to the customer. A suspension or disconnection notice may be issued concurrently with the written request for the additional deposit or current usage payment.

(2) Non-residential customers. An additional deposit may be requested from a non-residential customer.

(A) To require such a deposit, the actual billings of the non-residential customer must be at least twice the amount of the estimated billings, and a suspension or disconnection notice must have been issued on a bill within the previous 12 months.

(B) The utility may require that the new deposit be made within ten days after issuing a written suspension or disconnection notice and a request for an additional deposit.

(C) The utility may disconnect service if the additional deposit or the current usage payment is not paid within ten days of the request provided a written suspension or disconnection notice has been properly issued to the customer. A suspension or disconnection notice may be issued concurrently with the written request for the additional deposit or current usage payment.

(e) Deposits for temporary or seasonal service and for weekend residences. The utility may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or service to a weekend residence, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.

(f) Amount of deposit.

(1) The total of all deposits shall not exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service). The estimated annual billings may include charges that are in a utility's tariffs including long distance charges only where the local exchange carrier bills those charges to the customer pursuant to its tariffs. Such charges shall not be included in calculating the deposit amount if federal authority so prohibits, or prohibits long distance charges as a condition for local service or as a reason for disconnection of local exchange service.

(2) In determining the amount of any deposit permitted by this section, no revenue from non-tariffed products or services may be used.

(g) Interest on deposits. Each utility requiring deposits shall pay interest on these deposits at an annual rate at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code Annotated §183.003 (Vernon 1998) (relating to Rate of Interest). If a deposit is refunded within 30 days of receipt, no interest payment is required. If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(h) Notification to customers. When a deposit is required, the utility shall provide applicants or customers written information about deposits by giving the customer a copy of the brochure, "Your Rights as a Customer".

(i) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) The utility shall issue a receipt of deposit to each applicant paying a deposit and shall provide means for a depositor to establish claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years.

(4) The utility shall make a reasonable effort to return an unclaimed deposit.

(j) Guarantees of residential customer accounts.

(1) A guarantee between a utility and a guarantor must be in writing and shall be for no more than the amount of deposit the utility would require on the applicant's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) The utility shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The utility shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next workday.

(B) The utility may transfer the amount owed on the defaulted account to the guarantor's own service bill provided the guaranteed amount owed is identified separately on the bill as required by §26.25(c)(4)(I) of this title (relating to the Issuance and Format of Bills).

(5) The utility may disconnect service to the guarantor for nonpayment of the guaranteed amount only if the disconnection was included in the terms of the written agreement and only after proper notice as described by paragraph (4) of this subsection, and §26.28(b)(5) of this title (relating to Suspension or Disconnection of Service).

(k) Refunding deposits and voiding letters of guarantee.

(1) If service is not connected, or is disconnected, the utility shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided or refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premise to another within the service area of the utility is not a disconnection, and no additional deposit may be required.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without paying bills late more than twice, and when the customer is not delinquent in the payment of the current bills, the utility shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee, or provide written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or letter of guarantee may be retained.

(l) Re-establishment of credit. Every applicant who previously has been a customer of the utility and whose service has been disconnected for nonpayment of bills or theft of service shall be required, before service is reconnected, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and reestablish credit. The utility must prove the amount of utility service received but not paid for and the reasonableness of any charges for the unpaid service and any other charges required as a condition of service restoration.

(m) Upon sale or transfer of utility or company. Upon the sale or transfer of any utility or any of its operating units, the seller shall provide the buyer with all deposit records.

§26.25. Issuance and Format of Bills.

(a) Frequency of bills. The utility shall issue bills monthly unless otherwise authorized by the commission or unless service is for less than one month. Bills shall list all charges due.

(b) Billing information.

(1) The utility shall provide free to the customer a breakdown of local service charges at the time the service is initially installed or modified and upon request.

(2) Customer billing sent through the United States mail shall be sent in an envelope.

(c) Bill content.

(1) A notice shall be included on the customer's bill of the customer's right to a free annual or monthly itemized breakdown of all local service charges. The itemized breakdown may be on the customer's bill or sent by separate mailing.

(2) If the utility is billing the customer for services from another service provider, the bill shall identify the service provider and provide a toll-free number to call to resolve disputes or obtain information.

(3) The information required by this paragraph shall be arranged to allow the customer to readily compute the bill with the information provided.

(4) Each customer's bill shall include but not be limited to:

(A) the billing period;

(B) the due date of the bill, as specified in §26.27 of this title (relating to Bill Payment and Adjustments);

(C) each applicable telephone number and/or account number;

(D) the total amount due for features and services;

(E) the subtotal for basic local telecommunications service;

(i) if expanded calling scope services are mandatory, charges for the service shall be included in the subtotal for basic local service; or

(ii) if expanded calling scope service is optional, the incremental charges for the service shall be included in the subtotal for optional features;

(F) the sub-total for all optional features or services included in the bill;

(G) any tax, fee, or charge mandated by a federal, state, or local governmental agency that is to be specifically collected from customers;

(H) itemized long distance charges;

(I) any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the utility as required by §26.24 of this title (relating to Credit Requirements and Deposits);

(J) lease payments, including applicable sales taxes, for customer premises equipment owned by the carrier as part of its nonregulated operations or owned by another entity, which are clearly distinguished from charges for regulated services; and

(K) explanations of any abbreviations, symbols, or acronyms used that identify specific charges.

(d) Record retention. Each utility shall maintain monthly billing records for each account for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. Copies of a customer's billing records may be obtained by that customer upon request.

(e) Prepaid Local Telephone Service. To the extent any provisions of this section are applied to customers subscribing to Prepaid Local Telephone Service and are inconsistent with the rates, terms, and conditions of §26.29 of this title (relating to Prepaid Local Telephone Service), the provisions of §26.29 of this title shall apply.

§26.26. Spanish Language Requirements.

(a) Application. This section applies to each utility that serves a county where the number of Spanish-speaking persons as defined in §26.5 of this title (relating to Definitions) is 2000 or more according to the most current U.S. Census of Population (Bureau of Census, U.S. Department of Commerce, Census of Population and Housing).

(b) Written plan.

(1) Requirement. Each utility shall have a commission-approved written plan that describes how a Spanish-speaking person is provided, or will be provided reasonable access to the utility's programs and services.

(2) Minimum elements. The written plan required by paragraph (1) of this subsection shall include a clear and concise statement as to how the utility is doing or will do the following, for each part of its entire system:

(A) inform Spanish-speaking applicants and customers how they can get information contained in the utility's plan in the Spanish language;

(B) inform Spanish-speaking applicants and customers of their rights contained in this subchapter;

(C) inform Spanish-speaking applicants and customers of new services, discount programs, and promotions;

(D) allow Spanish-speaking customers to request repair service;

(E) ballot Spanish-speaking customers for services requiring a vote by ballot; and

(F) inform all of its service and repair representatives of the requirements of the plan.

§26.27. Bill Payment and Adjustments.

(a) Bill due date. The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance. The issuance date is the postmark date on the envelope or the issuance date on the bill if there is no postmark on the envelope. Payment for utility service is delinquent if not received at the utility or at the utility's authorized payment agency by close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next workday after the sixteenth day.

(b) Penalty on delinquent bills for retail service. A one-time penalty not to exceed 5.0% may be charged on each delinquent commercial or industrial bill. No penalty shall apply to a residential bill. The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. A telecommunications utility providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(c) Billing adjustments due to service interruptions. In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, appropriate adjustment or refunds shall be made to the customer.

(1) The amount of adjustment or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported.

(2) The refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative.

(3) The refund may be accomplished by a credit on a subsequent bill.

(d) Overbilling. If charges are found to be higher than authorized by the utility's tariffs, the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the utility corrects the overbilling within three billing cycles of the error, it need not pay interest on the overcharge.

(3) If the utility does not correct the overcharge within three billing cycles of the bill in error, it shall pay interest on the amount of the overcharge at the rate set by the commission each year.

(A) The interest rate shall be based on an average of prime commercial paper rates for the previous 12 months.

(B) Interest on overcharges that are not adjusted by the utility within three billing cycles of the bill in error shall accrue from the date of payment or the date of the bill in error.

(C) All interest shall be compounded monthly based on the annual rate.

(e) Underbilling. If charges are found to be lower than authorized by the utility's tariffs, or if the utility failed to bill the customer for service, the customer's bill may be corrected.

(1) The utility may backbill the customer for the amount that was underbilled. The backbilling shall not collect charges that extend more than six months from the date the error was discovered unless underbilling is a result of theft of service by the customer.

(2) The utility may disconnect service if the customer fails to pay charges arising from an underbilling.

(3) If the underbilling is $50 or more, the utility shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(4) The utility shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service by the customer. Interest on underbilled amounts shall be compounded monthly based on the annual rate and shall accrue from the day the customer is found to have first tampered with, bypassed, or diverted the service.

(f) Disputed bills.

(1) If there is a dispute between a customer and a utility about any bill for utility service, the utility shall investigate and report the results to the customer. If the dispute is not resolved, the utility shall inform the customer of the complaint procedures of the commission pursuant to §26.30 of this title (relating to Complaints).

(2) A customer's service shall not be suspended or disconnected for nonpayment of the disputed portion of the bill before the dispute is completely resolved by the utility.

(3) If the customer files a complaint with the commission, a customer's service shall not be suspended or disconnected for nonpayment of the disputed portion of the bill until the commission completes its informal complaint resolution process and informs the customer of its conclusions. If payment of some portion of the disputed amount is then required, the customer shall have ten days from the date when the commission issued its findings to pay the outstanding bill before it will be considered delinquent.

(4) The customer is obligated to pay any billings not disputed.

(g) Notice of alternative payment programs or payment assistance. When a customer contacts a utility and indicates inability to pay a bill or need of assistance with payment, the utility shall inform the customer of all alternative payment and payment assistance programs available from the utility, such as deferred payment plans, disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and procedure for applying for each.

(h) Payment arrangements. A "payment arrangement" is any agreement between the utility and a customer which allows the customer to pay the outstanding bill after its due date but before the due date of the next bill. If the utility issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the obligations of the payment arrangement, the utility may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date indicated in the notice, pursuant to §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.

(i) Deferred payment plan. A deferred payment plan is any written agreement between the utility and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. A deferred payment plan may be established in person or by telephone and all deferred payment plans shall be put in writing.

(1) The utility shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months; and

(2) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.

(3) When a residential customer has received service from its current utility for less than three months, the utility is not required to offer a deferred payment plan if the residential customer lacks:

(A) sufficient credit; or

(B) a satisfactory history of payment for service from a previous utility.

(4) Every deferred payment plan offered by a utility:

(A) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement." In addition, if the customer and the utility representative or agent meet in person, the utility representative shall read the preceding statement to the customer. The utility shall provide information to the customer in English and Spanish as necessary to make the preceding statement understandable to the customer;

(B) may include a 5.0% penalty for late payment but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid;

(E) shall state the specific amount of each installment;

(F) shall allow the utility to disconnect service if a customer does not fulfill the terms of the deferred payment plan;

(G) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, or marital status;

(H) shall be signed by the customer and a copy of the signed plan must be provided to the customer. If the agreement is made over the telephone, then the utility shall send a copy of the plan to the customer for signature; and

(I) shall allow either the customer or the utility to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.

(5) A utility may disconnect a customer who does not meet the terms of a deferred payment plan. However, the utility may not disconnect service until a disconnection notice has been issued to the customer indicating that the customer has not met the terms of the plan. The notice and disconnection shall conform with the disconnection rules in §26.28 of this title. The utility may renegotiate the deferred payment plan agreement before disconnection. If the customer did not sign the deferred payment plan and is not otherwise fulfilling the terms of the plan and the customer was previously provided a disconnection notice for the outstanding amount, no additional notice is required.

§26.28. Suspension or Disconnection of Service.

(a) Suspension or Disconnection Policy. If a utility chooses to suspend or disconnect a customer, it must follow the procedures below or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each utility is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the utility by the commission.

(b) Suspension or disconnection with notice. Utility service may be suspended or disconnected after proper notice, for any of these reasons:

(1) failure to pay a bill for charges that are in a utility's tariffs including long distance charges only where the local exchange carrier bills those charges to the customer pursuant to its tariffs or make deferred payment arrangements by the date of suspension or disconnection;

(2) failure to comply with the terms of a deferred payment agreement except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service);

(3) violation of the utility's rules on the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §26.24 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the utility has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment.

(c) Suspension or disconnection without notice. Utility service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:

(1) where service is connected without authority by a person who has not made application for service;

(2) where service was reconnected without authority after termination for nonpayment; or

(3) where there are instances of tampering with the utility company's equipment or evidence of theft of service.

(d) Suspension or disconnection prohibited. Utility service may not be suspended or disconnected for any of these reasons:

(1) failure to pay for any charges that are not provided for in a utility's tariffs;

(2) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(3) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service; or

(4) failure to pay disputed charges until a determination is made on the accuracy of the charges.

(e) Suspension or disconnection on holidays or weekends. Unless a dangerous condition exists or the customer requests disconnection, service shall not be suspended or disconnected on holidays or weekends, or the day immediately preceding a holiday or weekend, unless utility personnel are available on those days to take payments and reconnect service.

(f) Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without written notice to its customers and all neighboring utilities, and approval from the commission.

(g) Suspension or disconnection for ill and disabled. No utility may suspend or disconnect service at the permanent residence of a delinquent customer if that customer establishes that such action will prevent the customer from summoning emergency medical help for someone who is seriously ill residing at that residence.

(1) Each time a customer seeks to avoid suspension or disconnection of service under this subsection, the customer before the date of suspension or disconnection shall:

(A) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) contact the utility by the stated date of disconnection;

(B) have the person's attending physician submit a written statement to the utility; and

(C) enter into a deferred payment plan.

(2) The prohibition against suspension or disconnection provided by this subsection shall last 63 days from the issuance of the utility bill or a shorter period agreed upon by the utility and the customer or physician.

(h) Suspension and disconnection notices. Any suspension or disconnection notice issued by a utility to a customer must:

(1) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a utility's authorized payment agency is considered payment to the utility.

(2) be a separate mailing or hand delivery with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice.

(3) have a suspension or disconnection date that is not a holiday or weekend day, not less than ten days after the notice is issued.

(4) be in English and Spanish.

(5) include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the utility for more information.

§26.29. Prepaid Local Telephone Service (PLTS).

(a) Applicability. The provisions of this section shall apply to all dominant certificated telecommunications utilities (DCTUs) unless specifically indicated otherwise. A DCTU shall provide prepaid local telephone service (PLTS) as required by this section and shall not refuse to provide PLTS to an applicant for such service because the applicant is indebted to any DCTU or other telecommunications carrier for telecommunication services, including the carriage charges

of interexchange carriers where the DCTU bills those charges under tariffs or contracts.

(b) Eligible customers.

(1) Former customers. In cases where a DCTU would refuse to provide service to an applicant for residential telephone service because of indebtedness to any DCTU or other telecommunications carrier, the applicant is eligible to receive PLTS as required by this section.

(2) Current customers. A current residential customer who has not been disconnected but who has received a notice following suspension of service for non-payment for services is eligible to receive PLTS as required by this section.

(3) Applicant previously disconnected from PLTS by a DCTU. Any applicant who was previously disconnected from PLTS by a DCTU, pursuant to subsection (e)(6) of this section, does not have the right to receive PLTS from that DCTU again.

(4) Business customers shall not be eligible for PLTS.

(c) Requirements for notifying customers about PLTS. A DCTU shall provide notice to its customers about PLTS as required by this subsection.

(1) Timing of notice.

(A) If the DCTU's standard practice is to suspend a customer's service for non- payment of charges before disconnecting service, it shall notify the customer of the availability of PLTS in the suspension notice.

(B) If the DCTU's standard practice is to disconnect a customer's service without suspension, the DCTU shall notify such customer of the availability of PLTS within three days after disconnection.

(2) Content of notice. The notice provided by a DCTU offering PLTS shall be reviewed in the DCTU's compliance filing and shall notify customers of the rates, terms, and conditions of PLTS, as described in subsection (e) of this section, including:

(A) a customer's eligibility to enter into the PLTS plan;

(B) a description of the PLTS plan including its features, charges, and options;

(C) a customer's responsibility to make an initial payment for PLTS and any applicable service connection charges, as defined in subsection (e)(2)(A) of this section;

(D) a customer's responsibility to make the initial deferred payment, if applicable, in the third billing cycle and every month thereafter, for up to 12 months;

(E) a customer's responsibility not to incur additional charges for calls, including long distance or other usage-sensitive services that will be charged on the local telephone bill, nor to subscribe to any services other than those included in PLTS, as defined in §26.5 of this title (relating to Definitions);

(F) a customer's violation of the terms and conditions of the PLTS plan may result in disconnection;

(G) if a customer is disconnected for violation of the terms and conditions of the PLTS plan, a DCTU has the right to retain and apply any credit in the PLTS account to the customer's outstanding balances for telecommunications services;

(H) if a customer is disconnected for violation of the terms and conditions of the PLTS plan, that customer does not have the right to receive PLTS from that DCTU again; and

(I) the customer's responsibility to subscribe to PLTS within a certain time period in order to defer service restoration or connection charges as described in subsection (e)(1)(B) of this section.

(d) Subscription to PLTS.

(1) Customer request to subscribe to PLTS. To subscribe to PLTS, an eligible customer must contact the DCTU during regular business hours to request PLTS.

(2) Confirmation letter. Within 24 hours after a customer requests PLTS, the DCTU shall mail the customer a confirmation letter in English or Spanish as necessary, explaining the PLTS plan, including the customer's rights and responsibilities upon enrollment and information about the rates, terms, and conditions of service under the PLTS plan.

(e) Rates, terms, and conditions of PLTS. A DCTU shall offer PLTS under the following terms and conditions:

(1) Rates for PLTS.

(A) The monthly rate for PLTS shall include only:

(i) the applicable residential tariffed rate (or lifeline rates, if applicable) for services included in the PLTS definition in §26.5 of this title;

(ii) tariffed charges for non-listed and non-published service, if requested by the customer; and

(iii) surcharges and fees authorized by a governmental entity that are billed by the DCTU, including 911, subscriber line charges, sales tax, and municipal fees.

(B) Non-recurring rates.

(i) If a DCTU does not suspend basic local service before disconnection, the DCTU must defer service connection charges until the customer returns to basic local telecommunications service. However, if a customer does not subscribe to PLTS within ten days from the date the DCTU mailed a termination notice containing notice of PLTS eligibility, the DCTU may charge service connection charges when subscribing to PLTS.

(ii) If a DCTU suspends basic local service prior to disconnection, the DCTU must defer service restoration charges until the subscribing customer returns to basic local telecommunications service.

(C) Late charges. The DCTU shall not assess late charges on a PLTS customer.

(2) Payments under PLTS.

(A) A DCTU may require the residential PLTS customer to make an initial payment for service, which shall not exceed:

(i) the rates as described in paragraph (1)(A) of this subsection for up to two months of service; and

(ii) applicable non-recurring service connection charges.

(B) A DCTU shall not require subsequent monthly payments that exceed the rates for one month of PLTS. The due date of monthly payments shall be based on the DCTU's regular monthly billing cycle.

(C) A customer may be required to make payments under the deferred payment plan according to paragraph (4) of this subsection.

(3) Toll blocking. PLTS subscribers shall have mandatory toll blocking and usage sensitive blocking placed on the telephone lines.

(A) Customer responsibility. A customer subscribing to PLTS shall not place or receive calls, including long distance or other usage-sensitive services, for which additional charges are billed to the customer's telephone number, nor subscribe to any services other than those included in PLTS.

(B) DCTU responsibility. The DCTU shall notify the customers of their responsibilities under PLTS when the customer inquires about the service in the confirmation letter.

(4) Deferred payment plan under PLTS. As a condition of subscribing to PLTS, the DCTU may require an applicant to enter into a deferred payment plan for any outstanding debt owed to the DCTU for local basic telephone service. The DCTU shall not require an applicant to enter into a deferred payment plan to pay any outstanding debt for any services that the customer cannot use under PLTS including long distance services. If the DCTU is unable to determine the amount of outstanding debt, the DCTU shall not require an applicant to enter into a deferred payment plan.

(A) Determination of deferred payment plan amount. To determine the deferred payment plan amount, the DCTU shall:

(i) determine the amount the customer owes for basic local telephone service;

(ii) apply any undesignated partial payment made by the customer before subscribing to PLTS to past debt for local telecommunications service; and

(iii) not reallocate any undesignated partial payments assigned under clause (ii) of this subparagraph to amounts not yet incurred for basic local telecommunications service.

(B) Monthly payments under the deferred payment plan.

(i) A deferred payment plan for past due charges shall not require the applicant to make monthly payments which exceed $10 per month or one-twelfth of the outstanding debt as determined in subparagraph (A) of this paragraph, whichever is greater.

(ii) If the DCTU and PLTS customer enter into a deferred payment, the initial deferred payment shall be billed beginning with the third billing cycle after initiation of service and on a monthly basis thereafter.

(5) Customer deposit. No deposit shall be required from any residential applicant for PLTS.

(6) Disconnection of PLTS.

(A) Disconnection with notice. A DCTU may disconnect PLTS after notice for any of the following reasons:

(i) failure to comply with the terms of a deferred payment plan for PLTS;

(ii) upon conclusion of all periods for which an advance payment has been applied to the PLTS account and when the customer's PLTS account has a zero balance; or

(iii) violation of the DCTU's rules on using PLTS in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation.

(B) Disconnection without notice. A DCTU may immediately disconnect PLTS without notice:

(i) if the customer accrues new charges for toll or other services on the telephone bill as described in paragraph (3) of this subsection;

(ii) where a known dangerous condition exists for as long as the condition exists; or

(iii) where service is connected without authority by a person who has not applied for the service or who has reconnected service without authority after termination.

(C) Notice after disconnection. If a PLTS customer is disconnected under subparagraph (A) or (B) of this paragraph, a DCTU shall send a final notice stating that the customer is permanently disconnected from PLTS and that the customer shall not be eligible for PLTS from that DCTU. That notice shall also state the terms and conditions that the customer must satisfy before the customer can return to basic local telecommunications service.

(f) Return to basic local telecommunications service.

(1) A customer subscribing to PLTS may return to basic local telecommunications service if the customer has paid:

(A) all outstanding debt to the DCTU, including the carriage charges of interexchange carriers where the DCTU bills those charges pursuant to tariffs or contracts; and

(B) bills for PLTS.

(2) When a customer completes the obligations identified in paragraph (1) of this subsection, a DCTU shall notify the customer of the:

(A) eligibility requirements for returning to basic local telecommunications services;

(B) option of receiving basic local telecommunications service with toll blocking and/or usage sensitive blocking; and

(C) requirement to contact the DCTU if the customer wants to return to basic local telecommunications service.

(3) If the customer is eligible to return to basic local telecommunications service, the customer shall:

(A) request basic local telecommunications service from the DCTU; and

(B) pay the service restoration fee, if applicable.

(g) Customer education.

(1) The commission shall provide information about the PLTS plan to customers.

(2) A DCTU subject to the requirements of this section shall provide information about the PLTS plan annually in customers' bills. This information shall be subject to review during the DCTU's compliance filing.

(3) A DCTU or its affiliate publishing a white pages directory on behalf of the DCTU shall disclose in clear language the availability, terms, and conditions of the PLTS plan in the section of the directory stating the rights of a customer.

(h) Toll and usage sensitive blocking capability.

(1) The DCTU shall provide toll blocking and usage sensitive blocking to its maximum technical capability.

(A) If the DCTU's tariffs reflect its maximum technical capability, it shall provide toll blocking and usage sensitive blocking as stated in those tariffs.

(B) If the DCTU's tariffs do not reflect its maximum technical blocking capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.

(C) If the DCTU does not have a tariff for toll or usage sensitive blocking but has such technical capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.

(D) As the DCTU's blocking capability increases, it shall notify the commission and provide such enhanced blocking under PLTS.

(2) Where technically capable, toll blocking shall not deny access to toll-free numbers.

(3) When imposing a toll or usage sensitive services block, the DCTU shall do so in a manner that is not unreasonably preferential, prejudicial, or discriminatory.

(i) Waiver request.

(1) A DCTU may request exemption from the requirements of this section, on a wire- center by wire-center basis, if it cannot meet the toll blocking and/or usage sensitive requirements.

(2) A DCTU requesting a waiver shall fully document in its compliance filings the technical reasons for its inability to toll and/or usage sensitive block and indicate when such technical capability will be available in the wire center.

(3) A waiver shall expire when the DCTU acquires the capability to block toll and/or usage sensitive services or when the DCTU is required to acquire the capability to toll and/or usage sensitive block by federal or state law or regulations, whichever comes first. The DCTU shall notify the commission in writing within 30 days of acquiring or being required to acquire the capability.

(j) Interexchange carrier (IXC) notification. A DCTU serving 31,000 or more access lines and that is not a cooperative corporation shall:

(1) Within 24 hours after a customer subscribes to PLTS, include a notice in the Customer Access Record Exchange (CARE) or similar report if developed by the DCTU, and the Line Identification Database (LIDB) indicating that the customer is subscribed to PLTS and any number changes;

(2) Make access to the information contained in LIDB available to all IXCs serving the customer's area; and

(3) If CARE, or similar report if developed by the DCTU, and LIDB are not available, the DCTU shall specify in its tariffs a comparable method of providing such notice to IXCs serving the area indicating a customer's subscription to PLTS; and

(4) This subsection should not be interpreted as expanding access to CARE, or similar report if developed by the DCTU, to IXCs other than the customers' presubscribed carriers.

(k) Tariff compliance. A DCTU subject to this section shall file tariffs in compliance with this section, and pursuant to §23.24 of this title (relating to Form and Filing of Tariffs).

§26.30. Complaints.

(a) Complaints to the utility. A customer may file a complaint in person, by letter, or by telephone with the utility. The utility shall investigate and advise the complainant of the results within 21 days.

(b) Supervisory review by the utility. Any utility customer or applicant has the right to request a supervisory review if they are not satisfied with the utility's response to their complaint.

(1) If the utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review shall be made for the earliest possible date.

(2) Service shall not be disconnected before completion of the review. If the customer chooses not to participate in a review then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §26.28 of this title (relating to Suspension or Disconnection of Service).

(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(4) Customers who are dissatisfied with the utility's supervisory review must be informed of their right to file a complaint with the commission.

(c) Complaints to the commission.

(1) If the complainant is dissatisfied with the results of the utility's complaint investigation or supervisory review, the utility must advise the complainant of the commission's informal complaint resolution process. The utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888- 782-8477, fax (512) 936-7003, e-mail address customer@puc.state.tx.us, Internet address www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1- 800-735-2989.

(2) The utility shall investigate all complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the utility.

(3) The utility shall keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges which require no further action by the utility need not be recorded.

§26.31. Information to Applicants and Customers.

(a) Information to residential applicants. Each utility shall provide this information to applicants when they request new service or transfer existing service to a new location:

(1) the utility's lowest-priced alternatives and range of service offerings available at the applicant's location. The information shall begin with the lowest-priced alternative and give full consideration to applicable equipment options and installation charges; and

(2) the customer information packet described in subsection (c) of this section. This is not required for transfer of existing service.

(b) Information regarding rate schedules and classifications and utility facilities.

(1) Each utility shall notify customers affected by a change in rates or schedule of classification.

(2) Each utility shall maintain copies of its rates and services tariff in each office where applications are received.

(3) Each utility shall post a notice in a conspicuous place in each office where service applications are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the commission, are available for inspection.

(4) Each utility shall maintain a current set of maps showing the physical locations of its facilities that include an accurate description of all facilities (central office facilities, buried cable, etc.). These maps shall be kept by the utility in a central location and will be available for commission inspection during normal working hours. Each business office or service center shall have available up-to-date maps, plans, or records of its immediate service area, with any other information necessary to enable the utility to advise applicants and others entitled to the information about the facilities serving that locality.

(c) Customer information packets.

(1) The information packet shall be entitled "Your Rights as a Customer." Cooperatives may use the title "Your Rights as a Member."

(2) The information packet shall be mailed to all customers at least every other year at no charge to the customer. If the utility provides the customer with the same information in the telephone directories provided to each customer pursuant to §23.61(b) of this title (relating to Telephone Utilities), the utility shall provide a printed statement on the bill, or a billing insert identifying the location of the information in paragraph (5) of this subsection. The statement shall be published every six months.

(3) The information shall be written in plain, non-technical language.

(4) The information shall be provided in English and Spanish; however, a utility is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the utility is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the packet, that the information is available in Spanish from the utility, both by mail and at the utility's offices.

(5) The information packet shall include all of the following:

(A) the customer's right to information about rates and services and the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(B) the utility's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer;

(C) the time allowed to pay outstanding bills;

(D) grounds for suspension and/or disconnection of service;

(E) the steps that must be taken before a utility may suspend and/or disconnect service;

(F) the steps for resolving billing disputes with the utility and how disputes affect suspension and/or disconnection of service;

(G) information on alternative payment plans offered by the utility, including, but not limited to, payment arrangements and deferred payment plans, as well as a statement that a customer has the right to request these alternative payment plans;

(H) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;

(I) the availability of prepaid local telephone service;

(J) the customer's right to file a complaint with the utility, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the utility's service. The commission's contact information: Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address customer@puc.state.tx.us, Internet address www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

(K) the hours, addresses, and telephone numbers of utility offices where bills may be paid and information may be obtained, or a toll-free number that provides the customer with this information;

(L) a toll-free telephone number or the equivalent (such as WATS or collect calls) where customers may call to report service problems or make billing inquiries;

(M) a statement that utility services are provided without discrimination as to a customer's race, nationality, color, religion, sex, or marital status, and a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(N) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf at the commission; and

(O) how customers with physical disabilities, and those who care for them, can identify themselves to the utility so that special action can be taken to appropriately inform these persons of their rights.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 1999.

TRD-9902220
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 6, 1999
Proposal publication date: December 11, 1998
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 162. Supervision of Medical School Students

22 TAC §162.3

The Texas State Board of Medical Examiners adopts an amendment to §162.3, concerning registration for the supervision of medical students without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1523) and will not be republished.

The amendment is adopted to ensure that the medical school has a certificate of authority from the Texas Higher Education Coordinating Board. The adopted review of Chapter 162 is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902257
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 305–7016

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Chapter 163. Licensure

22 TAC §163.10

The Texas State Board of Medical Examiners adopts an amendment to §163.10, concerning Distinguished Professors Temporary License without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1523) and will not be republished.

The amendment is adopted to specify who may request a temporary license for distinguished professors. The amendment also corrects the names of two medical schools in subsection (a)(4).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902258
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 305–7016

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Chapter 166. Physician Registration

22 TAC §166.2, §166.4

The Texas State Board of Medical Examiners adopts amendments to §166.2 and §166.4, concerning Continuing Medical Education and Renewal of Expired License without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1524) and will not be republished.

The amendments are adopted to clarify existing requirements. The adopted review of Chapter 166 is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902259
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 305–7016

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Chapter 171. Institutional Permits

The Texas State Board of Medical Examiners adopts the repeal of §§171.1-171.9 and new §§171.1-171.6, concerning Institutional Permits without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1525) and will not be republished.

The repeals and new rules are necessary to improve the regulation of postgraduate medical training in the State of Texas.

The Board received a comment from Paul C. Mohl, M.D., Professor and Residency Training Director, University of Texas Southwestern Medical Center. Dr. Mohl expressed concern that

§171.1(e)(2) requiring the director of each approved postgraduate training program to report if a permit holder has been absent from the program for more than 30 days is too burdensome on the training program directors. Dr. Mohl asserted that residents routinely take approved leaves of absence for pregnancy, illness and other harmless reasons.

The following are the reasons why the Board disagrees with the submissions and proposals set forth above: The provisions of §171.1(e) were drafted by the Board in an effort to create rules that were specifically not onerous to program directors but at the same time facilitated good communication between the programs and the Board. It should be noted that permits must now be proactively renewed before their expiration date. As such, the Board needs to be notified when a permit holder will be absent for an extended period of time in order to grant a renewal of the permit before it expires. Additionally, if the permit holder requires additional time beyond the initially allocated permit dates, a Temporary Permit might need to be issued. Receiving notice of a permit holder's absence ahead of time will facilitate the Board's timely issuance of permits.

The following is a restatement of the rule's factual basis: The repeal and the new sections are necessary to improve the regulation of postgraduate medical training in the State of Texas and it was felt that extensive rewrite of the sections was necessary to accomplish this.

22 TAC §§171.1–171.9

The repeals are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902260

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Effective date: May 9, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305–7016

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22 TAC §§171.1–171.6

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902261

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Effective date: May 9, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305–7016

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Chapter 185. Physician Assistants

22 TAC §185.2, §185.14

The Texas State Board of Medical Examiners adopts amendments to §185.2 and §185.14, concerning Definitions and Notification of Intent to Practice and Supervise without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1532) and will not be republished.

The definitions in §185.2 were numbered to comply with Texas Register requirements. Also, the amendments clarify the term "submit" as it relates to documentation required for approval for a physician assistant to practice and for a physician to supervise a physician assistant. In addition, the combining of two separate applications into one form will be more efficient.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

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Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Effective date: May 9, 1999

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For further information, please call: (512) 305–7016

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Chapter 193. Standing Delegation Orders

22 TAC §193.2

The Texas State Board of Medical Examiners adopts an amendment to §193.2, concerning Definitions without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1533) and will not be republished.

The definitions are numbered to comply with Texas Register requirements. Also, the amendment clarifies the term "submit" as it relates to documentation required for approval for a physician to delegate prescriptive authority to a physician assistant or advanced practice nurse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902262
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 1999
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For further information, please call: (512) 305–7016

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Part XXIII. Texas Real Estate Commission

Chapter 541. Rules Relating to the Provisions of Texas Civil Statutes, Article 6252–13c

22 TAC §541.1

The Texas Real Estate Commission (TREC) adopts an amendment to §541.1, concerning criminal offense guidelines, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1733).

The amendment adds registered easement or right-of-way agents to the list of licensees subject to the section. The section enumerates the kinds of criminal offenses which may result in the disapproval of an application for a license or disciplinary action against a licensee under the authority of Texas Civil Statutes, Article 6252-13c. Adoption of the amendment was necessary to clarify that the section applies to persons licensed or registered by the commission or seeking a license or registration.

No comments were received on the proposal.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 1999.

TRD-9902193
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: May 4, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 465–3900

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Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter B. Professional and Technical Standards

22 TAC §663.13, §663.23

The Texas Board of Professional Land Surveying adopts an amendment to §663.13 and new §663.23, concerning Introduction, Descriptions Prepared for Political Subdivisions and Certifying Services, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1899) and will not be republished.

Section 663.13 is adopted to provide the public with a better, more informative, surveying product.

Section 663.23 is adopted to establish a regulation that will allow professional land surveyors to sign and seal documents, which are not within the definition of professional land surveying.

One comment was received in support of §663.13. The following were received regarding §663.23: three commenters thought the rule was unnecessary; one commenter requested clarification; one commenter had concerns regarding the use of record information and one commenter was in favor of the rule. The board feels that the rule is necessary and record information used for this type of survey should pose no harm to the public.

The amendment and new section are adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902247
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: May 9, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 452–9427

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 117. End Stage Renal Disease Facilities

25 TAC §§117.12, 117.43, 117.45, 117.65

The Texas Department of Health submitted final rules for 25 TAC, Chapter 117, End Stage Renal Disease Facilities published in the April 2, 1999, issue of the Texas Register (24 TexReg 2639).

On page 2641, preamble, first column, 3rd paragraph, 7th sentence, the language should state "a registered nurse who is not the nurse functioning in the charge role to initiate the initial nursing assessment." instead of "a registered nurse who is not the charge nurse to initiate the initial nursing assessment."

Sections §§117.12, 117.43, 117.45, and 117.65 were shown to be adopted without changes. However, the sections should have been published to show correct language. The sections should read as follows.

§117.12. Application and Issuance of Temporary Initial License and First Annual License.

(a) Application procedures. This section establishes the application procedures for obtaining a temporary initial license. All first-time applications for a license are applications for a temporary initial license. The application for a temporary initial license is also an application for the first annual license issued under the requirements in subsection (h) of this section.

(b) Request for an application. Upon written request, the Texas Department of Health

(department) shall furnish a person with an application packet and a copy of the statute and this chapter.

(c) Application requirements. The applicant shall submit the information listed in paragraph (3) of this subsection to the department within six months from the date the department mails the application packet to the applicant.

(1) If the department does not receive the information listed in paragraph (3) of this subsection within six months from the mailing date, the applicant must request a new application packet.

(2) An applicant shall not misstate a material fact on any documents required to be submitted under this section.

(3) The following items shall be submitted with the original application form and shall be originals or notarized copies:

(A) an accurate and complete application which contains original signatures;

(B) the initial license fee;

(C) information on the applicant including name, street address, mailing address, social security number or franchise tax identification number, date of birth, and driver's license number;

(D) the name, mailing address, and street address of the facility. The address provided on the application must be the address from which the facility will be operating and providing services;

(E) the telephone number of the facility, the telephone number where the administrator can usually be reached when the facility is closed, and if the facility has a fax machine, the fax number;

(F) a list of names and business addresses of all persons who own any percentage interest in the applicant including:

(i) each limited partner and general partner if the applicant is a partnership; and

(ii) each shareholder, member, director, and officer if the applicant is a corporation, limited liability company or other business entity;

(G) a list of any businesses with which the applicant subcontracts and in which the persons listed under subparagraph (F) of this paragraph hold any percentage of the ownership;

(H) if the applicant has held or holds a facility license or has been or is an affiliate of another licensed facility, the relationship, including the name and current or last address of the other facility and the date such relationship commenced and, if applicable, the date it was terminated;

(I) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of any percentage in the management company;

(J) a list of management and supervisory personnel, and a job description for each administrative and supervisory position;

(K) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter;

(L) a notarized attestation that each dialysis technician on staff has completed the training and competency evaluation programs. This attestation may be consolidated with the attestation described in subparagraph (K) of this paragraph;

(M) a written plan for the orderly transfer of care of the applicant's patients and clinical records if the applicant is unable to maintain services under the license;

(N) a copy of an approved fire safety inspection report from the local fire authority in whose jurisdiction the facility is based that is dated no earlier than 12 months prior to the date of the application;

(O) an organizational structure of the staffing for the facility;

(P) if an 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, 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;

(Q) the organizational structure of the applicant which includes written full disclosure of the names and addresses of all owners and persons controlling any ownership interest in the facility. In the case of corporations, holding companies, partnerships, and similar organizations, the names and addresses of officers, directors, and stockholders, both beneficial and of record, when holding any percent, shall be disclosed;

(R) the name(s) and credentials of:

(i) the medical director or at least one physician on staff at the facility who is qualified to serve as the medical director;

(ii) the license number(s) of the physician(s); and

(iii) if applicable, all physician assistants and advanced practice nurses who will provide services at the facility;

(S) the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) denial, suspension, or revocation of an end stage renal disease facility license in any state; a license for any health

care facility or a license for a home and community support services agency (agency) in any state; or any other enforcement action, such as (but not limited to) civil or criminal court action in any state;

(ii) denial, suspension, or revocation of or other enforcement action against a facility license in any state, a license for any health care facility in any state, or a license for an agency in any state which is or was proposed by the licensing agency and the status of the proposal;

(iii) surrender of a license before expiration of the license or allowing a license to expire in lieu of the department proceeding with enforcement action;

(iv) federal or state (any state) criminal felony arrests or convictions;

(v) federal or state Medicaid or Medicare sanctions or penalties relating to the operation of a health care facility or agency;

(vi) operation of a health care facility or agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(vii) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid; and

(T) for the two-year period preceding the application date, the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) federal or state (any state) criminal misdemeanor arrests or convictions;

(ii) federal or state (any state) tax liens;

(iii) unsatisfied final judgement(s);

(iv) eviction involving any property or space used as a facility or health care facility in any state;

(v) injunctive orders from any court; or

(vi) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions.

(4) The applicant shall retain a copy of all documentation that is submitted to the department.

(d) Application processing. Upon receipt of the application, including the required documentation described in paragraph (2) of this subsection and the initial license fee from the applicant, the department shall review the material to determine whether it is complete and correct.

(1) The time periods for processing an application shall be in accordance with §117.15 of this title (relating to Time Periods for Processing and Issuing a License).

(2) If a facility receives a notice from the department that some or all of the information required under subsection (c)(3) of this section is deficient, the facility shall submit the required information no later than six months from the date of the notice.

(A) A facility which fails to submit the required information within six months from the notice date is considered to have withdrawn its application for a temporary initial license. The license fee will not be refunded.

(B) A facility which has withdrawn its application must reapply for a license in accordance with this section, if it wishes to continue the application process. A new license fee is required.

(e) Issuance of a temporary initial license.

(1) Presurvey conference. Once the department has determined that the application form, the information required to accompany the application form, and the initial license fee are complete and correct, the department shall schedule a presurvey conference with the applicant in order to inform the applicant or his or her designee of the licensing standards for the facility. The presurvey conference will be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement.

(2) Design and space inspection. The department shall conduct the design and space inspection described in §117.16(b)(1) of this title (relating to Inspections) prior to issuance of the temporary initial license, unless the department waives the requirement.

(3) Issuance of license. After completion of the presurvey conference and the design and space inspection described in paragraph (2) of this subsection, the department:

(A) will issue a temporary initial license; or

(B) may deny the temporary initial license if the facility does not meet the requirements described in this section. The procedures for denying a temporary initial license shall be in accordance with §117.84 of this title (relating to Disciplinary Action).

(f) Compliance required. Continuing compliance with the statute and this chapter is required during the temporary initial license period in order for a first annual license to be issued.

(g) Withdrawal from the application process. An applicant may withdraw its application for a temporary initial license at any time.

(1) An applicant who decides to withdraw its application for a temporary initial license during the application review process, shall submit to the department its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(2) An applicant who decides to withdraw its application after the department issues the temporary initial license shall return the license certificate to the department with a written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(h) Issuance of first annual license. The department shall issue a first annual license to a facility if, after inspection and investigation during the temporary initial license period, it finds the applicant meets the requirements of this chapter. An inspection for the purposes of issuing a first annual license shall be completed in accordance with §117.16(c) of this title. The first annual license supersedes the temporary initial license and shall expire one year from the date of issuance of the temporary initial license.

(1) If the temporary initial license is issued on the first day of a month, the first annual license expires on the last day of the preceding month of the next year.

(2) If the temporary initial license is issued on the second or any subsequent day of a month, the first annual license expires on the last day of the month of issuance of the next year.

(i) Noncompliance. The department may deny the first annual license if, after inspection and investigation during the temporary license period, the department determines that the facility does not comply with the requirements of the statute or this chapter. Denial of a first annual license shall be in accordance with §117.84 of this title.

§117.43. Provision and Coordination of Treatment and Services.

(a) Patient rights. Each facility shall adopt, implement, and enforce policies and procedures appropriate to the patient population served which ensure each patient is:

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

(12) transferred only for medical reasons, for the patient's welfare or that of other patients or staff members, or for nonpayment of fees. A patient shall be given 30 calendar days advance notice to ensure orderly transfer or discharge, except in cases where the patient presents an immediate risk to others;

(13) provided protection from abuse, neglect, or exploitation as those terms are defined in §1.204 of this title (relating to Abuse, Neglect, and Exploitation Defined);

(14) provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law. This includes documents executed under the Natural Death Act, Health and Safety Code, Chapter 672; Civil Practice and Remedies Code, Chapter 135 concerning durable power of attorney for health care; and Health and Safety Code, Chapter 674 concerning out-of-hospital do-not-resuscitate;

(15) aware of the mechanisms and agencies to express a complaint against the facility without fear of reprisal or denial of services. A facility shall provide to each individual who is admitted to the facility a written statement that informs the individual that a complaint against the facility may be directed to the department. The statement shall be provided at the time of admission and shall advise the patient that registration of complaints may be filed with the director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, 1-800-228-1570. Correctional institutions shall not be required to include the 1-800 number in information provided to patients in these facilities; and

(16) fully informed of the rights listed in this subsection, the responsibilities established by the facility, and all rules and regulations governing patient conduct and responsibilities. A written copy of the patient's rights and responsibilities shall be provided to each patient or the patient's legal representative upon admission and a copy shall be posted with the facility license certificate.

(b) (No change.)

(c) Emergency preparedness.

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

(6) A written disaster preparedness plan specific to each facility shall be developed and in place. The plan shall be based on an assessment of the probability and type of disaster in each region and the local resources available to the facility. The plan shall include procedures designed to minimize harm to patients and staff along with ensuring safe facility operations. The plan and in-service programs for patients and staff shall include provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure. Each staff member employed by or under contract with the facility shall be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan.

(7) A facility shall have an emergency lighting system capable of providing sufficient illumination to allow safe discontinuation of treatments and safe evacuation from the building. Battery pack systems shall be maintained and tested quarterly. If a facility maintains a back-up generator, the generator must be installed, tested and maintained in accordance with the National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1993 Edition (NFPA 110), published by the National Fire Protection Association.

(8) A facility shall develop and post a telephone number listing specific to the facility equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency.

(d) Medication storage and administration.

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

(3) All verbal or telephone orders shall be received by a licensed nurse or physician assistant. Orders relating to a specific service (e.g. dietary services), may be received by the licensed professional responsible for providing the service (e.g. dietitian) and countersigned by the physician within 15 calendar days.

(4)-(8) (No change.)

(e) Nursing services.

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

(4) A nurse functioning in the charge role shall be on site and available to the treatment area to provide patient care during all dialysis treatments.

(5) At least one licensed nurse shall be available on-site to provide patient care for every twelve patients or portion thereof. This may include the nurse functioning in the charge role required by paragraph (4) of this subsection.

(6) (No change.)

(7) Sufficient direct care staff shall be on-site to meet the needs of the patients.

(A) The staffing level for a facility shall not exceed four patients per licensed nurse or patient care technician per patient shift. During treatment of eight or more patients, the licensed nurse functioning in the charge role shall not be included in this ratio.

(B) For pediatric dialysis patients, one licensed nurse shall be provided on-site for each patient weighing less than ten kilograms and one licensed nurse provided on- site for every two patients weighing from ten to 20 kilograms.

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

(10) The initial patient evaluation shall be initiated by a licensed nurse functioning in the charge role or a registered nurse at the time of the first treatment in the facility and completed by a registered nurse within the first three treatments.

(f)-(i) (No change.)

(j) Medical services.

(1) (No change.)

(2) Medical staff.

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

(C) At a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once every two weeks during the patient's treatment time. Home patients shall be seen by a physician at least every three months. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy, monthly for in-facility patients and quarterly for home patients.

(D) (No change.)

(E) Orders for treatment shall be in writing and signed by the prescribing physician. Routine orders for treatment shall be updated at least annually.

(i) Orders for hemodialysis treatment shall include length of treatment, dialyzer, blood flow rate, dialysate composition, target weight, medications including heparin, and, as needed, specific infection control measures.

(ii) Orders for peritoneal dialysis treatment shall include fill volume(s), number of exchanges, dialysate concentrations, catheter care, medications, and, as needed, specific infection control measures.

(F) (No change.)

(k) (No change.)

(l) Temporary and transient admissions.

(1) Temporary admissions. If a facility dialyzes a patient who is normally dialyzed in another local facility, the referring and receiving facilities shall meet the requirements in this paragraph.

(A) The individual to be treated by the receiving facility must be a patient of a physician who is a member of the medical staffs of the referring and receiving facilities.

(B) The referring and receiving facilities shall establish, implement, and enforce written policies and procedures for communication of medical information and transfer of clinical records between facilities.

(C) The receiving facility shall continuously evaluate staffing levels and utilize this information in determining whether to accept a temporary admission for treatment.

(D) The receiving facility shall obtain the information described in §117.45(e) of this title (relating to Clinical Records) prior to providing dialysis. However, if the referring facility is closed when the patient's need for dialysis treatment is identified, the receiving facility may provide dialysis with, at a minimum, the following information:

(i) orders for treatment;

(ii) hepatitis B status;

(iii) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in §117.45(e) of this title.

(E) In the event a temporary patient's hepatitis status is unknown, the patient may undergo treatment as if the HBsAg test results were potentially positive, except that such a patient shall not be treated in the HBsAg isolation room, area, or machine.

(2) Transient admissions. If a facility dialyzes a patient who is normally dialyzed in a distant facility, the facility shall meet the requirements in this paragraph.

(A) The facility shall continuously evaluate staffing levels and utilize this information in determining whether to accept a transient patient for treatment.

(B) The facility shall obtain the information described in §117.45(e) of this title (relating to Clinical Records) prior to providing dialysis. However, if the transient patient arrives unannounced, the facility may provide dialysis with, at a minimum, the following information:

(i) evidence of evaluation of the patient by a physician on the staff of the facility;

(ii) orders for treatment;

(iii) hepatitis B status;

(iv) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in §117.45(e) of this title.

(C) In the event a transient patient's hepatitis status is unknown, the patient may undergo treatment as if the HBsAg test results were potentially positive, except that such a patient shall not be treated in the HBsAg isolation room, area, or machine.

(m) Laboratory services. A facility that provides laboratory services shall comply with the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(n) Illegal remuneration prohibited. A facility shall not violate the Health and Safety Code, §161.191, et seq. concerning the prohibition on illegal remuneration for the purpose of securing or soliciting patients or patronage.

(o) Do-not-resuscitate orders. The facility shall comply with the Health and Safety Code, Chapter 674 concerning out-of-hospital do-not-resuscitate orders.

(p) Audits of billing. A facility shall develop, implement, and enforce a compliance policy for monitoring its receipt and expenditure of state or federal funds.

(q) Student health care professionals. If the facility has a contract or agreement with an accredited school of health care to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) Students may be used in facilities, provided the instructor gives class supervision and assumes responsibility for all student activities occurring within the facility. If the student is licensed (e.g., a licensed vocational nurse attending a registered nurse program for licensure as a registered nurse) the facility shall ensure that the administration of any medication(s) is within the student's licensed scope of practice.

(2) A student may administer medications only if:

(A) on assignment as a student of his or her school of health care; and

(B) the instructor is on the premises and immediately supervises the administration of medication by an unlicensed student and the administration of such medication is within the instructor's licensed scope of practice.

(3) Students shall not be used to fulfill the requirement for administration of medications by licensed personnel.

(4) Students shall not be considered when determining staffing levels required by the facility.

(r) Complaint resolution. A facility shall adopt, implement, and enforce procedures for the resolution of complaints relevant to quality of care or services rendered by licensed health care professionals and other members of the facility staff, including contract services or staff. The facility shall document the receipt and the disposition of the complaint. The investigation and documentation must be completed within 30 calendar days after the facility receives

the complaint, unless the facility has and documents reasonable cause for a delay.

§117.45. Clinical Records.

(a) (No change.)

(b) A patient's medical history and physical shall be completed 30 days before or within two weeks after admission to the facility. Prior to the first treatment in the facility, the physician shall inform the nurse functioning in the charge role of at least the patient's diagnoses, medications, hepatitis status, allergies, and dialysis prescription. The clinical record shall include this data.

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

(e) Prior to providing dialysis treatment of a transient patient, a facility shall obtain and include, at a minimum:

(1) orders for treatment in this facility;

(2) list of medications and allergies;

(3) laboratory reports. Such reports shall indicate laboratory work was performed no later than one month prior to treatment at the facility and include screening for hepatitis B status;

(4) the most current patient care plan;

(5) the most current treatment records from the home facility; and

(6) records of care and treatment at this facility.

(f)-(j) (No change.)

§117.65. Prohibited Acts.

(a) Performance of the following acts by any dialysis technician who is not a licensed vocational nurse qualified to function in the charge role is prohibited:

(1) initiation of patient education; or

(2) alteration of ordered treatment, including shortening of the treatment time.

(b) Performance of the following acts by a dialysis technician who is not a licensed vocational nurse is prohibited:

(1) initiation or discontinuation of dialysis via a central catheter, manipulation of a central catheter, or dressing changes for a central catheter;

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

(4) performance of non-access site arterial puncture;

(5) acceptance of physician orders; or

(6) provision of hemodialysis treatment to pediatric patients under 14 years of age or under 35 kilograms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 1999.

TRD-9902205
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: April 11, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

The Commissioner of Insurance adopts amendments to §§3.3303, 3.3306, 3.3308, 3.3309, and 3.3324 and new §3.3312 under Subchapter T and amendments to §§3.3603 - 3.3609, and 3.3613 under Subchapter W, concerning minimum standards for Medicare supplement policies and miscellaneous rules for group and individual accident and health insurance. With the exception of new §3.3312 under Subchapter T, these sections are adopted without changes to the proposed text as published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1300) and will not be republished. In conjunction with these adopted amendments and new section, the commissioner has adopted the repeal of existing §§3.3610 - 3.3612. Notice of the adoption of the repeal is published elsewhere in this issue of the *Texas Register*.

The amended sections are necessary to bring Texas into compliance with Public Law 105-33, the federal Balanced Budget Act of 1997 (BBA). Failure to comply with the federal mandates in the BBA will subject Texas to potential penalties including the loss of authority to regulate Medicare supplement coverage. The major changes brought about by the BBA specify additional situations in which Medicare beneficiaries, after other coverage ceases or terminates, will be guaranteed access to certain types of Medicare supplement policies on a guaranteed issue basis. The BBA also mandates protections for these persons against discrimination in the sale and pricing of Medicare supplement policies, as well as limitation of preexisting condition exclusions, and adds two new high deductible plans. These adopted amendments increase awareness and accessibility of Medicare supplement coverage, which will thus increase beneficiary access to health care services, particularly in areas with limited availability of Medicare+Choice plans. The adopted amendments also provide the advantage of encouraging participation in a Medicare+Choice plan. Medicare+Choice offers a marketplace of options similar to those available to the non-Medicare population. Under the adopted amendments, Medicare beneficiaries are guaranteed, under certain circumstances, the right to Medicare supplement coverage if they choose to enroll in original Medicare coverage after leaving a Medicare+Choice plan.

The department has made one change from the proposed rule to correct a typographical error. In §3.3312(b)(2)(A) of the proposed rule, the department has changed the citation to U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part D to Part C.

Amended §3.3303 adds definitions for bankruptcy, continuous period of creditable coverage, creditable coverage, employee welfare benefit plan, health maintenance organization, insolvency, Medicare+Choice organization, Medicare+Choice plan, Medicare+Choice private fee-for-service plan, Medicare Select policy, point-of-service, provider-sponsored organization, and Secretary. Amended §3.3306 sets out requirements for reduction of preexisting condition exclusions, coinsurance and copayments under Medicare Part B, and the composition of new high deductible plans "F" and "J," and revise the list of provided annual preventive services. Amended §3.3308 requires forms to disclose the reduction of preexisting condition limitations in ac-

cordance with the new regulations. Amended §3.3309 requires application forms to include questions to elicit information as to whether the applicant is eligible for guaranteed issuance of certain Medicare supplement plans, or reduction of any applicable preexisting condition limitation. The new adopted §3.3312 sets out requirements for guaranteed issue of certain Medicare supplement coverage for certain eligible persons. Amended §3.3324 sets out requirements for reduction of preexisting condition exclusions for certain eligible persons based on their period of creditable coverage. Amended §§3.3603 through 3.3609 and §3.3613 relate to the required disclosure statements for policies that duplicate Medicare benefits. These sections codify notice requirements for the content and format of 7 disclosure statements which must be provided to inform prospective buyers of health insurance policies about the extent to which benefits under such policies duplicate Medicare benefits, pursuant to requirements approved by the U.S. Secretary of Health and Human Services. Amended §3.3603 sets out the purpose and scope of the notice and disclosure. Amended §3.3604 sets out the content and format of the notice for policies that provide benefits for expenses incurred for an accidental injury only. Amended §3.3605 sets out the content and format of the notice for policies that provide benefits for specified limited services. Amended §3.3606 sets out the content and format of the notice for policies that reimburse expenses incurred for specified disease or other specified impairments (including cancer policies, specified disease policies and other policies limiting reimbursement to named medical conditions). Amended §3.3607 sets out the content and format of the notice for policies that pay fixed dollar amounts for specified disease or other specified impairments (including cancer, specified disease policies, and other policies that pay a scheduled benefit or specified payment based on diagnosis of the conditions named in the policy). Amended §3.3608 sets out the content and format of the notice for indemnity or other policies (other than long-term care policies) that pay a fixed dollar amount per day. Amended §3.3609 sets out the content and format of the notice for policies that provide benefits for both expenses incurred and fixed indemnity. Amended §3.3613 sets out the content and format of the notice for other health insurance policies not specifically identified in §§3.3604 through 3.3609.

§3.3306. A commenter recommends that the department expand the pool of approved payees in two clauses contained in this section to include nurse practitioners and clinical nurse specialists.

Agency Response: The department appreciates this comment; however, since the department did not propose amending these clauses, this recommended change could be considered a substantive change which could require republication. Therefore, the department declines to make this change at this time. However, the department is researching the suggested change and has forwarded the commenter's recommendation to the NAIC for consideration as part of a group of corrections to the Model Regulation the NAIC plans to publish. The department anticipates addressing the recommendation of the commenter along with other corrections when finalized by the NAIC. In the interim, the department notes that the fact the rule does not specifically list a practitioner does not preclude a carrier from recognizing a federally approved practitioner as an independent reimbursement provider.

For, with changes: Coalition For Nurses In Advanced Practice.

Subchapter T. Minimum Standards for Medicare Supplement Policies

28 TAC §§3.3303, 3.3306, 3.3308, 3.3309, 3.3312, 3.3324

The amendments and new section are adopted under the Insurance Code Articles 3.74, 3.70-3 and 1.03A. Article 3.74, §5(d) provides that the department may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not Medicare supplement coverages. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law necessary for the state to retain certification under 42 U.S.C. Section 1395ss, as well as any other reasonable rules necessary and proper to enforce Texas' minimum statutory standards for Medicare supplement policies. Article 3.70-3 authorizes the department to adopt rules and regulations for the filing and submission of health insurance policies as are necessary, proper or advisable. 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.

§3.3312. Guaranteed Issue for Eligible Persons.

(a) Guaranteed Issue.

(1) Eligible persons are those individuals described in subsection (b) of this section who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subsection (b), of this section and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) of this section that is offered and is available for issuance to newly enrolled individuals by the issuer, and shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) Eligible Persons. An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, and any of the following circumstances apply:

(A) The organization's or plan's certification (under U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part C) has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including

termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(C) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part D in relation to the individual, including the failure to provide an individual on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(D) The individual meets such other exceptional conditions as the Secretary may provide.

(3) The individual is enrolled with an entity listed in subparagraphs (A) - (D) of this paragraph and enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) of this subsection:

(A) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1,1999;

(C) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a Medicare Select policy; and

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or of other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and the subsequent enrollment is terminated by the individual during any period within the first 12 months of such subsequent enrollment (during which the individual is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming enrolled in Medicare part B for benefits at age 65 or older, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan no later than 12 months after the effective date of enrollment.

(c) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection (b)(1), (2), (3) and (4) of this section is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Subsection (b)(5) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in paragraph (1) of this subsection.

(3) Subsection (b)(6) of this section shall include any Medicare supplement policy offered by any issuer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 1999.

TRD-9902216
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 14, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 463-6327

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Subchapter W. Miscellaneous Rules for Group and Individual Accident and Health Insurance

28 TAC §§3.3603-3.3609, 3.3613

The amendments are adopted under the Insurance Code Articles 3.74, 3.70-3 and 1.03A. Article 3.74, §5(d) provides that the department may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not Medicare supplement coverages. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law necessary for the state to retain certification under 42 U.S.C. Section 1395ss, as well as any other reasonable rules necessary and proper to enforce Texas' minimum statutory standards for Medicare supplement policies. Article 3.70-3 authorizes the department to adopt rules and regulations for the filing and submission of health insurance policies as are necessary, proper or advisable. 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.

Filed with the Office of the Secretary of State on April 15, 1999.

TRD-9902215
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 14, 1999

Proposal publication date: February 26, 1999

For further information, please call: (512) 463-6327

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28 TAC §§3.3610-3.3612

The Commissioner of Insurance adopts the repeal of §§3.3610 - 3.3612, concerning notices for Medicare supplement policies. The repeal is adopted without changes to the proposal as published in the February 26, 1999 issue of the Texas Register (24 TexReg 1300). In conjunction with this repeal, the commissioner has adopted amendments to (3.3603 - 3.3609 and (3.3613 under Subchapter W. Notice of these adopted amendments is published elsewhere in this issue of the Texas Register.

Repeal of these sections is necessary to bring Texas into compliance with the federal Balanced Budget Act of 1997 (BBA).

The purpose and objective of this repeal is to delete disclosure notices no longer necessary for certain policies. Changes to the BBA clarify that those certain policies are no longer considered to provide benefits that duplicate Medicare.

No comments were received.

The repeal is adopted under the Insurance Code Articles 3.70-3, 3.74, and 1.03A. Article 3.70-3 authorizes the department to adopt rules and regulations for the filing and submission of health insurance policies as are necessary, proper or advisable. Article 3.74, §5(d) provides that the department may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not Medicare supplement coverages. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law as necessary for the state to retain certification under 42 U.S.C. Section 1395ss, as well as any other reasonable rules necessary and proper to enforce Texas' minimum statutory standards for Medicare supplement policies. 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.

Filed with the Office of the Secretary of State on April 15, 1999.

TRD-9902217

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 14, 1999

Proposal publication date: February 26, 1999

For further information, please call: (512) 463-6327

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Chapter 21. Trade Practices

Subchapter M. Mandatory Notice Requirements

28 TAC §§21.2101, 21.2103, 21.2105-21.2107

The Commissioner of Insurance adopts amendments to §§21.2101, 21.2103, 21.2105, 21.2106, and new §21.2107 concerning mandatory notice requirements. The sections are adopted without changes to the proposed text as published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1309) and will not be republished.

These adopted amendments are necessary to bring Texas into compliance with the federal Public Law 105-33, the Balanced Budget Act of 1997 (BBA). Failure to comply with the federal mandates in the BBA will subject Texas to potential penalties including the loss of regulatory authority over Medicare supplement coverage. These amendments will increase awareness of the types of Medicare supplement coverages and protections available to persons whose coverage under certain health benefit plans is ending. The amendments make corrections necessary to broaden the scope of the subchapter to include new requirements for notice to certain individuals of their right to guaranteed issuance of Medicare supplement coverage; the new section details those notice requirements.

Amended §21.2101 broadens the scope of this subchapter. Amended §21.2103 redefines the notices described in that section to clarify that they are benefit notices. Amended §21.2105 limits the application of that section to benefit notices required by (21.2103 of the subchapter. Amended §21.2106 updates the title change to §21.2103. New §21.2107 adds a requirement to provide notice to certain enrollees of their right to Medicare supplement coverage and related protections.

No comments were received.

The amendments and new section are adopted under the Insurance Code Articles 3.51-6, 3.74, 3.95-15, 20A.22(c), 26.04, and 1.03A. Article 3.51-6, §5 authorizes the department to issue such rules as may be necessary to carry out the article. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law as necessary for the state to retain certification under 42 U.S.C. Section 1395ss, as well as any other reasonable rules necessary and proper to enforce Texas' minimum statutory standards for Medicare supplement policies. Article 3.95-15 directs the commissioner to adopt rules as necessary to meet the minimum requirements of federal law. Article 20A.22(c) authorizes the commissioner to promulgate rules as are necessary and proper to meet the requirements of federal law. Article 26.04 directs the commissioner to adopt rules as necessary to meet the minimum requirements of federal law. 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.

Filed with the Office of the Secretary of State on April 15, 1999.

TRD-9902218

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 14, 1999

Proposal publication date: February 26, 1999

For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XII. Texas Military Facilities Commission

Chapter 378. Sale of Commission Property

37 TAC §§378.1–378.3

The Texas Military Facilities Commission adopts new §§378.1-378.3, concerning the Sale of Commission Property. New §378.1 and §378.2 are adopted with changes to the proposed text as published in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11786). New §378.3 is adopted without changes and will not be republished.

The new sections describe the circumstances under which Commission real property is eligible for sale and describe the manner by which the property will be advertised for sale. The new sections also notify purchasers of certain bid requirements and that the property will be conveyed by special warranty deed with a reservation to the state of a one-sixteenth mineral interest. All bids may be rejected. Finally, the new sections describe the expenses that will be borne by the Commission.

The Commission received no comments on the sections as proposed.

New §378.1 and §378.2 as adopted vary from the sections as proposed. In §378.1 the word "property" is substituted for the word "Estate". In §378.2 the word "property" is substituted for the word "estate", and the phrase "real property" is substituted for the words "land" and "property". Counsel for the Commission has advised that the changes affect no new persons, entities, or subjects other than those given notice and that the changes are nonsubstantive. Accordingly, republication of the adopted sections as proposed new sections is not required.

The new sections are adopted under the Government Code, §435.011. The Commission interprets §435.011 as authorizing it to adopt rules necessary to carry out Chapter 435, including rules for the disposition of its real property as set forth in the Government Code, §435.013 and §435.025.

§378.1. Property Eligible for Sale.

Real property is eligible for sale when it is fully paid for and free of liens, if:

(1) the Adjutant General and the Commission declare the property surplus; and

(2) the sale is in the best interest of the Commission and the Texas National Guard.

§378.2. Real Property Sales.

(a) The real property shall be advertised for cash sale to the highest bidder.

(b) The advertisement shall be published in at least two newspapers of general circulation including, if possible, the county in which the real property is located.

(c) The advertisement shall notify bidders the following listed in paragraphs (1)-(6) of this subsection.

(1) All bids must be in written form.

(2) Bids are due at a specified time, place, and date.

(3) Bidding may be conducted openly or with sealed bids.

(4) The real property shall be conveyed by Special Warranty Deed.

(5) The deed shall reserve to the state a one-sixteenth mineral interest free of the cost of production, unless:

(A) the successful bidder is the Commission's original grantor or donor; or

(B) the Commission owns less than a one-sixteenth mineral interest.

(6) The Commission may reject any and all bids.

(d) If the original grantor or donor is a governmental entity, the Commission may convey to the original grantor or donor, at fair market value based on an independent appraisal, the real property and any improvements. If the original grantor or donor declines to purchase the real property and improvements at fair market value based on an independent appraisal, the Commission will initiate a bidding process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 1999.

TRD-9902168
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Effective date: May 3, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 406–6971

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Chapter 379. Administrative Rules

37 TAC §§379.4–379.7

The Texas Military Facilities Commission adopts new §§379.4-379.7, concerning Sick Leave Pool Procedures, without changes to the proposed text as published in the November 20, 1998, issue of the *Texas Register* (23 TexReg 11788) and will not be republished.

The new sections designate the executive director or the director's designee as the pool administrator, describe the process whereby employees may donate to the pool, and create a procedure for employees to request sick leave pool grants, for decisions to be made on the request, and for appeals of adverse decisions by the administrator's designee to the administrator whose decision is final.

The Commission received no comments on the sections as proposed.

The new sections are adopted under the Government Code, §435.011. The Commission interprets §435.011 as authorizing it to adopt rules necessary to carry out Chapter 435.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 1999.

TRD-9902169
Jerry D. Malcolm
Executive Director

Texas Military Facilities Commission
Effective date: May 3, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 406–6971

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter V. Medicaid Eligibility

40 TAC §3.2203, §3.2204

The Texas Department of Human Services (DHS) adopts amendments to §3.2203, concerning four months post-Medicaid eligibility, and §3.2204, concerning type program 07 Medicaid, in its Income Assistance Services chapter.

The justification for the amendments is to comply with Section 1931 of the Social Security Act of 1996, effective August 22, 1996.

The amendments will function by ensuring that DHS will be in compliance with an interpretation from the Health Care Financing Administration of Public Law 104-193, which allows clients to have continued Medicaid coverage and go to their own doctor instead of the emergency room.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs. The amendments are adopted in compliance with federal requirements effective August 22, 1996.

The amendments implement the Human Resources Code, §§31.001- 31.0325.

§3.2203. Four Months Post-Medicaid Eligibility.

Households who receive Temporary Assistance for Needy Families (TANF) or Medicaid only under Section 1931 of the Social Security Act and are denied because of receipt of child support are eligible for four months post-Medicaid as stipulated in the Social Security Act, 406(h).

§3.2204. Type Program 07 Medicaid.

(a) For Temporary Assistance for Needy Families (TANF) households in the State Welfare Reform Control Group as described in §3.6004 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility) the following apply:

(1) Households who receive TANF or Medicaid only under Section 1931 of the Social Security Act and are denied because of new or increased earnings or because of increased work hours of the principle wage earner parent on a TANF Unemployed Parent case are eligible for 12 months post-Medicaid, as stipulated in the Social Security Act, 1925.

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

(b) All other households who receive TANF or Medicaid only under Section 1931 of the Social Security Act and are denied because of new or increased earnings are eligible for 12 months post-Medicaid for reasons stipulated in the Social Security Act, 1925, as long as an eligible child resides in the home, except for those households eligible for 18 months post-Medicaid. Households are eligible for 18 months post-Medicaid in this situation if the caretaker or second parent is exempt from Choices participation and voluntarily participates in Choices as specified in Human Resources Code §31.012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 1999.

TRD-9902199
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 22, 1996
For further information, please call: (512) 438–3765

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Chapter 48. Community Care for Aged and Disabled

Subchapter F. In-Home and Family Support Program

40 TAC §48.2702

The Texas Department of Human Services (DHS) adopts an amendment to §48.2702, without changes to the proposed text published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1760).

Currently, DHS requires that an applicant for the In-Home and Family Support Program (IH/FSP) file an application form to access the program waiting list. DHS has determined this is an unnecessary burden on applicants and is removing this barrier to waiting list access by revising the rule. The revised rule will allow an applicant's name to be placed on the IH/FSP list by simply making a verbal request for IH/FSP assistance. The new procedures have been developed for all DHS Community Care programs, thereby allowing people to apply for IH/FSP through the Community Care intake system, rather than being referred to a separate system for IH/FSP. In addition, applicants can access the waiting list more expediently through a telephone request, and will not be required to complete an application form until services are actually available.

The amendment will function by providing a streamlined process for IH/FSP applicants to access the program's waiting list.

During the public comment period, DHS received a comment from the Coalition of Texans with Disabilities in support of the proposal.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public assistance and support services to people with disabilities.

The amendment implements §§22.001-22.030 and 35.001-35.012 of the Human Resources 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 April 19, 1999.

TRD-9902251
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 15, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 438–3765

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Chapter 69. Contracted Services

The Texas Department of Human Services (DHS) adopts the repeal of §69.212, and adopts new §69.212, without changes to the proposed text published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1760).

The justification for the repeal and new section is to ensure that DHS makes every reasonable effort to reduce risks associated with Year 2000 problems. To adequately address its responsibilities, DHS is adopting a new rule to (1) require the continuation of contract deliverables provided prior to Year 2000, as well as those provided on or after Year 2000 (some pre-year 2000 deliverables are dependent upon Year 2000 recognition); (2) require the continuation of contract deliverables according to the contract, rather than addressing only health and safety issues; (3) assure that embedded/imbedded logic integral to systems used to deliver goods and services, not just the contractor's computer systems, will not negatively influence the provision of contract deliverables; and (4) address actions that DHS may take to cure contractors' noncompliance with the rule.

The repeal and new section will function by ensuring that the delivery of contracted goods and services to Texas' neediest families and individuals are not interrupted, disrupted, degraded, delayed, or misapplied due to Year 2000 automation difficulties.

No comments were received regarding adoption of the repeal and new section.

Subchapter L. Contract Administration

40 TAC §69.212

The repeal is adopted under the Human Resources Code, Title 2, §22.002(f), which allows DHS to accomplish the purpose of its programs by contracting. Implicit in the act is DHS's ability to adopt rules for contract administration.

The repeal implements the Human Resources Code, §22.002(f).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902252
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 15, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 438–3765

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The new section is adopted under the Human Resources Code, Title 2, §22.002(f), which allows DHS to accomplish the purpose of its programs by contracting. Implicit in the act is DHS's ability to adopt rules for contract administration.

The new section implements the Human Resources Code, §22.002(f).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902253
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 15, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 438–3765

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

PROPOSED ACTIONS

The Commissioner of Insurance will hold a public hearing under Docket Number 2407 on June 1, 1999 at 9:00 a.m, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Commercial Lines Statistical Plan. The proposed changes are necessary in order to (a) make revisions to company reporting instructions to correct the name and address of TDI's Commercial Lines Statistical Agent, (b) require that unused portions of numeric and alphanumeric fields be zero filled, (c) require that insurers report data via diskette in ASCII fixed-length format only, (d) remove references to Annual Statement Line 25 (Glass), (e) add a footnote for Commercial Automobile Employer's Non-ownership classes to indicate that these classes are not applicable for Liability Assigned Risks, (f) update General Liability Premises & Operations and Products & Completed Operations classes, exposure bases and codes, (g) add ISO Texas Fire Subline Codes, (h) modify descriptions for Time Element coverage codes on run-off transactions, (i) add Basic Group II construction definitions and rating categories, (j) clarify that construction definitions and classes for all coverages other than those including wind should reflect fire construction criteria, (k) add class codes for Bobtail and Deadhead coverages as part of Special Types, (l) add class codes for Commercial Automobile Special Types under Leasing and Rental Concerns and for short term motorcycles, motorbikes and similar vehicles, (m) add a class code under Commercial Automobile Special Types for Rental Car Companies, and (n) make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference P-0499-04-I) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-04-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902345
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

♦ ♦ ♦

The Commissioner of Insurance will hold a public hearing under Docket Number 2408 on June 1, 1999 at 9:00 a.m in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Statistical Plan for Residential Risks. The proposed changes are necessary in order to (a) add a field and statistical codes for the Texas Windstorm Insurance Association (TWIA) Building Code Credits, (b) add additional Optional Credits statistical codes for Dwelling coverage, (c) add a field and statistical codes for Law and Ordinance Coverage, (d) remove the Texas Place Code Listing from the Statistical Plan and reference it as a separate document, and (e) make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference P-0499-05-I) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the

petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-05-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902346
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

♦ ♦ ♦

The Commissioner of Insurance will hold a public hearing under Docket Number 2409 on June 1, 1999 at 9:00 a.m, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the American Insurance Association (AIA) proposing amendments to the Texas Statistical Plan for Residential Risks. The changes are being proposed in order to reduce statistical reporting burdens and to simplify some reporting requirements. The changes proposed are: (a) to limit reporting requirements for "roof construction" to policies which receive a premium credit for hail-resistant roofs; (b) to combine roof construction types "aluminum", "steel", "copper", and "roll roofing" into one category termed "metal"; and (c) to eliminate "recycled roofing products" and "single ply membrane systems" from the list of roof construction options. AIA's petition (Reference P-0499-03) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the AIA petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-03).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902344
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

♦ ♦ ♦

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

General Land Office

Title 31, Part I

In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter and section referenced:

Chapter 1 Executive Administration

§1.52 Cost of Service

The resulting re-adoption, amendment, and/or repeal of the rule are expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495.

TRD-9902242
Larry R. Soward
Chief Clerk
General Land Office
Filed: April 19, 1999

♦ ♦ ♦

In compliance with Article IX, §167, of the 1997 Appropriations Act, and in accordance with a previously published Notice of Intent to Review filing (23 TexReg 11669), the General Land Office has reviewed the rules of the chapter and sections referenced. The agency finds that the reasons for adopting the rules continue to exist and it proposes to readopt these rules.

Chapter 19. Oil Spill Prevention and Response

Comments on this rule review conclusion may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495. The deadline for comments is June 1, 1999.

TRD-9902280
Larry R. Soward
Chief Clerk
General Land Office
Filed: April 19, 1999

♦ ♦ ♦

In compliance with Article IX, §167, of the 1997 Appropriations Act, and in accordance with a previously published Notice of Intent to Review filing (23 TexReg 11669), the General Land Office has reviewed the rules of the chapter and sections referenced. The agency finds that the reasons for adopting the rules continue to exist and it proposes to readopt these rules.

Chapter 21. Oil Spill Prevention and Response Hearings Procedures

Comments on this rule review conclusion may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495. The deadline for comments is June 1, 1999.

TRD-9902279
Larry R. Soward
Chief Clerk
General Land Office
Filed: April 19, 1999

♦ ♦ ♦

In compliance with Article IX, §167, of the 1997 Appropriations Act, and in accordance with a previously published Notice of Intent to Review filing (23 TexReg 11971), the General Land Office has reviewed the rules of the chapter and sections referenced. The agency finds that the reasons for adopting the following rules continue to exist and it proposes to readopt these rules:

Chapter 155. Land Resources

Subchapter A - Coastal Public Lands: §§1.1-1.9, §1.11, and §1.15

Subchapter B. Practice and Procedure for State-Owned Lands and Flats: §1.21, §1.22, and §1.24.

The agency finds that reasons for the following rule do not exist and proposes to repeal this rule:

§155.23 - Hearing Procedures

Comments on this rule review conclusion may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495. The deadline for comments is June 1, 1999.

TRD-9902241
Larry R. Soward
Chief Clerk
General Land Office
Filed: April 19, 1999

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part I

The Texas State Library and Archives Commission proposes to review Chapter 9, concerning Library Services for Blind or Physically Handicapped Individuals, in accordance with the requirements of the Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature, 1997.

The reasons for adopting the rules in Chapter 9 continue to exist. The rules were adopted pursuant to the Human Resources Code, §91.082 that requires the Texas State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials; Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library; and Government Code §441.112 that authorizes the commission to lend print access aids. The rules are necessary to establish policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission.

Comments on the commission's review of its rules in Chapter 9 may be submitted to Jenifer Flaxbart, Director Talking Book Program, P.O. Box 12927, Austin, Texas, 78711-2927. Comments are due 30 days after publication in the *Texas Register*. For further information or questions, concerning this proposal, please contact Jenifer Flaxbart at (512) 463-5428.

TRD-9902188
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: April 14, 1999

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Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review the following sections of Chapter 535 in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.61. Examinations

§535.62. Waiver of Examinations

§535.63. Brokers: Education and Experience

§535.64. Salespersons: Education

§535.66. Educational Programs: Accreditation

§535.68. Brokers: Alternative Education and Experience

§535.69. Additional Core Real Estate Courses

§535.70. Required Coursework

TRD-9902195
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: April 14, 1999

♦ ♦ ♦

Texas Workers' Compensation Commission

Title 28, Part II

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 141 concerning Benefit Review Conference and Chapter 122 concerning Compensation Procedure-Claimants. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature.

The agency's reason for adopting the rules contained in these chapters continue to exist and it proposes to readopt these rules.

Comments regarding the §167 requirement as to whether the reason for adopting this rule continues to exist must be received by 5:00 p.m. on May 31, 1999, and submitted to Donna Davila, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas, 78704-7491.

§122.1 Notice to Employer of Injury or Occupational Disease.

§122.2 Injured Employee's Claim for Compensation.

§122.3 Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders.

§122.4 State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.

§122.100 Claim for Death Benefits.

§141.1 Requesting and Setting a Benefit Review Conference.

§141.2 Canceling or Rescheduling a Benefit Review Conference.

§141.3 Failure to Attend a Benefit Review Conference.

§141.4 Filing and Exchange Pertinent Information.

§141.5 Description of the Benefit Review Conference.

§141.6 Interlocutory Orders.

§141.7 Commission Actions After a Benefit Review Conference.

TRD-9902367
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 21, 1999

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Adopted Rule Reviews

Automobile Theft Prevention Authority

Title 43, Part III

The Automobile Theft Prevention Authority (ATPA) has completed its review of Chapter 57 relating to the ATPA, as noticed in the September 11, 1998, *Texas Register* (23 TexReg 9440). In accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, the ATPA readopts Chapter 57 and finds that the reasons

for adopting this chapter continues to exist. As part of this review process, the ATPA will propose changes to §§57.2-4, 57.13-15, 57.18-22, 57.28, 57.30, 57.33, 57.34, 57.36, 57.42, and 57.51, which will be published in a later issue of the *Texas Register*: Part of the proposed changes will include the repeal of §§57.5, 57.27, 57.37, 57.43, 57.45, and 57.46; the subject matter of these rules will be transferred to other rules.

No comments were received on the §167 review requirement for chapter 57 as to whether the reason for adopting the rules continues to exist.

TRD-9902312
Agustin De La Rosa
Director
Automobile Theft Prevention Authority
Filed: April 19, 1999

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Texas State Library and Archives Commission

Title 13, Part I

The Texas State Library and Archives Commission has completed the review of the rules in Title 13, Chapter 5, concerning county librarian certification, as noticed in the November 13, 1998 issue of the *Texas Register* (23 TexReg 11669). The commission readopts §§5.1-5.5 of this chapter in accordance with the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. The commission finds that it is necessary to continue county library certification; therefore the reason for adopting this chapter continues to exist. The commission will propose amending or repealing §5.6, but is not readopting §5.6.

The commission received no comments on the review of Chapter 5.

The sections in Chapter 5 are adopted under Government Code §441.006(a) and §441.007(a) which provide the Commission with authority to govern the Texas State Library and adopt rules on certification of county librarians.

The adopted sections affect Government Code §§441.007, 441.0071-441.0074.

TRD-9902187
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: April 14, 1999

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Texas State Board of Medical Examiners

Title 22, Part IX

The Texas State Board of Medical Examiners adopts the review of Chapter 162 (§§162.1-162.3), concerning Supervision of Medical School Students, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The proposed review was published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1642)

The agency's reasons for adopting the rules contained in this chapter continue to exist.

The Texas State Board of Medical Examiners is contemporaneously adopting an amendment to §162.3 elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 162, Supervision of Medical School Students.

TRD-9902264
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: April 19, 1999

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The Texas State Board of Medical Examiners adopts the review Chapter 166 (§§166.1-166.6), concerning Physician Registration, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The proposed review was published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1642)

The agency's reasons for adopting the rules contained in this chapter continue to exist.

The Texas State Board of Medical Examiners is contemporaneously adopting amendments to §166.2 and §166.4 elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 166, Physician Registration.

TRD-9902265
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: April 19, 1999

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Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission adopts the review of Chapter 541, Criminal Offense Guidelines, in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

In conjunction with this review, the agency has amended 22 TAC §541.1 so as to clarify that registered easement and right-of-way agents are subject to the chapter. The adopted amendment is published in this issue of the *Texas Register*. The agency has determined that with these changes, the reasons for adopting the chapter continue to exist. No comments were received on the proposed amendment.

TRD-9902192
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: April 14, 1999

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Office of the Secretary of State

Title 1, Part IV

The Office of the Secretary of State adopts the review of Chapters 71, 73-76, 78-81, 83, 87, 91, 93, 95, 97, 99, and 101-105 in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167. The proposed review for Chapter 81 was published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 307).

The proposed review for Chapters 71, 73-76, 78-80, 83, 87, 91, 93, 95, 97, 99, and 101-105 was published in the March 19, 1999, issue (24 TexReg 2032).

The rule review process resulted in the proposed reorganization of Chapter 71 which appears in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3169).

One comment was received concerning the review of Chapter 71. The commenter recommended that the term "state seal of Texas" be shortened to "state seal." The commenter also recommended a change to the heading "private use of the state seal" because the standard designs described in §71.40 are not limited to private use. The office agrees with the comments, and is proposing to move the state seal rules to new Chapter 72. The proposal appears in the April 23 issue of the *Texas Register*.

As a result of the rule review process, the office plans to repeal rules contained in Chapter 81, Subchapter I (Campaign Reporting and Disclosure) and Subchapter K (Implementation of the National Voter Registration Act).

Also, as a result of the rule review process, the office is adopting the repeal of Chapter 99, §99.1 and §99.2 (Standards of Conduct of State Officers and Employees). The Secretary of State's authority to enforce these rules was repealed with the creation of the Texas Ethics Commission. For the same reason the office is adopting the repeal of Chapter 231 (Advisory Opinions). The State Ethics Advisory Commission no longer exists.

The office is also adopting the repeal of §§101.4, 101.8-101.10, 101.20, 101.21, 101.31-101.34, 101.40, 101.42-101.44, 101.50 and 101.53 (Practice and Procedure) because they duplicate procedures found in 1 TAC Chapter 155.

The Office of the Secretary of State finds that the reasons for Chapters 71, 73-76, 78-81, 83, 87, 91, 93, 95, 97, and 101-105 continue to exist.

TRD-9902355
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Filed: April 21, 1999

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Brazos Valley Council of Governments

Request for Proposals

The Brazos Valley Council of Governments (BVCOG) issues this Request for Proposal to furnish to the Council, housing management software for use in the management of U.S. Department of Housing and Urban Development, Section 8 Certificate/Voucher/Moderate Rehabilitation Tenant Based Rental Assistance Program. This software will be used to manage the administration of approximately 1800 certificates, vouchers and moderate rehabilitation units.

Information/submission packets may be obtained by request at: Brazos Valley Council of Governments, Robert Gresham, Director of Programs, P.O. Box 4128, 1706 East 29th Street, Bryan, Texas, 77805-4128. To be considered, proposals must be hand delivered on or before 5:00 PM, Friday, May 14, 1999 or postmarked before 12:00 Midnight on May 14, 1999.

Questions may be directed to Robert Gresham at (409) 775-4244.

TRD-9902316
Tom Wilkinson, Jr.
Executive Director
Brazos Valley Council of Governments
Filed: April 19, 1999

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Brazos Valley Workforce Development Board

Request for Proposals

The Brazos Valley Workforce Development Board voted on and approved the Child Care Management Services Request for Proposal (RFP) on April 13, 1999; and through its agent, the Brazos Valley Council of Governments, is issuing a Request for Proposal for Child Care Management Services-Client Services and Operations, Vendor Management, Financial Management, CCT, and ECDR. This RFP was developed using a modular format, providing information that applies to all programs, as well as separate sections detailing specific module requirements. Bidders may respond to any Packet: A.) Client Services and Operations, Vendor Management, and Financial Management or B.) CCT and ECDR or C.) Client Services and Operations, Vendor Management, Financial Management, CCT and ECDR, but each packet must have a separate proposal for each module in the packet.

There will be an official Bidder's Conference to be held on April 30, 1999, at the Workforce Center of the Brazos Valley located in the Townshire Shopping Center at 1905 South Texas Avenue in Bryan. The conference will begin promptly at 9:00 a.m. We encourage every interested bidder to attend this conference, as we will have staff available to answer questions about the RFP and the procurement process. Please hold any questions regarding your proposal until the conference. It is recommended that both the person responsible for developing your proposal, and the person responsible for the operation of your program, be present at the meeting.

This RFP is available upon request from BVCOG, 1706 East 29th Street, Bryan, Texas, 77802, between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday or by downloading it off of the following web site: http://www.bvjobs.org.

Questions may be directed to Trisha Einkauf, at (409) 775-4244, extension 156. The deadline for response to this RFP is May 28, 1999 at 4:00 p.m. Please see instructions for submission found in the enclosed RFP.

The Board appreciates your interest in child care management services in our area, and looks forward to receiving your proposal.

TRD-9902202
Nick Gilley
Board Chair
Brazos Valley Workforce Development Board
Filed: April 15, 1999

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for

federal consistency review were received for the following projects(s) during the period of April 8, 1999, through April 14, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: **Friendswood Land Development Company**; Location: The project is located in wetlands adjacent to and south of Lake Houston, within the Kings River Village Subdivision, in Harris County, Texas; Project Number: 99-0149-F1; Description of Proposed Action: The applicant is requesting authorization to place fill material into approximately 1 acre of wetlands to facilitate the development of Section 9 of the Kings River Village Subdivision. As mitigation for the jurisdictional impacts, the applicant is proposing to create a total of 7 acres of wetland habitat, at two locations within a 74-acre tract that has been set aside for habitat resource management; Type of Application: U.S.A.C.E. permit application number 21622 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: **Sabine Pass Port Authority**; Location: The project is located on the Sabine-Neches Ship Channel, at 5960 South 1st Street, in Sabine Pass, Jefferson County, Texas; Project Number: 99-0150-F1; Description of Proposed Action: The applicant proposes to construct a marina for pleasure boats. The marina basin will be approximately 300 feet wide and 426 feet long. It will be excavated to a depth of approximately -8 feet mean low tide (MLT). The excavated material, approximately 38,000 cubic yards, will be hauled to off-site upland placement areas; Type of Application: U.S.A.C.E. permit application number 21645 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

COMMENTS:

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible **within 30 days of publication of this notice.** Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9902353
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 21, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of April 19, 1999-April 25, 1999 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 April 19, 1999-April 25, 1999 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9902197
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commisssioner
Filed: April 14, 1999

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Court of Criminal Appeals

Order Adopting the Uniform Format Manuel for the Texas Court Reporters

ORDER ADOPTING THE UNIFORM FORMAT MANUAL FOR THE TEXAS COURT REPORTERS AND AMENDING COURT OF CRIMINAL APPEALS ORDER DIRECTING THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES

Effective May 1, 1999

IT IS ORDERED THAT:

Section B of the Court of Criminal Appeals Order Directing the Form of the Appellate Record in Criminal Cases, Texas Rules of Appellate Procedure, Appendix, is amended to read as follows, effective May 1, 1999:

(1) The court reporter must prepare and file the reporter's record in accordance with Rules 34.6 and 35 and the Uniform Format Manual for Texas Court Reporters. Even if more than one notice of appeal or request for preparation of the record is filed, the reporter should prepare only one record in a case.

(2) In the event of a flagrant violation of this Order in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter, to amend the reporter's record or to prepare a new reporter's record in proper form–and provide it to any party who has previously made a copy of the original, defective reporter's record–at the reporter's expense. Failure of a reporter to comply with the requirements of the Uniform Format Manual for Texas Court Reporters is also subject to discipline by the Court Reporter's Certification Board.

BE IT FURTHER ORDERED that the Clerk of this Court shall file with the Secretary of the State of Texas, for and in behalf of this Court, a duplicate original copy of this Order and the Clerk shall cause the order to be published in the *Texas Register* and the *Texas Bar Journal*.

BE IT FURTHER ORDERED that this amendment becomes effective May 1, 1999 and remains in effect unless and until disapproved, modified or changed by the Legislature or unless and until supplemented or amended by this Court.

BE IT FURTHER ORDERED that this order shall be recorded in the Minutes of this Court, and that the original of this order signed by the members of this Court shall be preserved by the Clerk of this Court as permanent records of this Court.

SIGNED AND ENTERED IN DUPLICATE ORIGINALS this the 12th day of April, 1999.

Michael J. McCormick, Presiding Judge; Lawrence E. Meyers, Judge; Stephen W. Mansfield, Judge; Sharon F. Keller, Judge; Tom Price,

Judge; Sue Holland, Judge; Paul Womack, Judge; Cheryl A. Johnson, Judge; Mike E. Keasler, Judge.

TRD-9902191
Troy Bennett
Clerk of the Court
Court of Criminal Appeals
Filed: April 14, 1999

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Texas Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Texas Credit Union Department and is under consideration:

An application was received from Houston Area Central Credit Union (Houston) seeking approval to merge with First Educators Credit Union (Houston) with the latter being the surviving credit union.

An application was received from Red Arrow-American Credit Union (San Antonio) seeking approval to merge with St Joseph's Credit Union (San Antonio) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9902366
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 21, 1999

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who work or reside in Sachse and Wylie, Texas, (excluding persons eligible for primary membership in any occupation or association-based credit union with a total membership of less than 20,000 members at the time membership is sought with Texans Credit Union, and having an office within the boundaries of Sachse and Wylie, Texas on July 1, 1999), to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who work or reside in Highland Village, Flower Mound, Coppell, Carrollton, Hebron, Lewisville, The Colony, and Frisco, Texas, (excluding persons eligible for primary membership in any occupation or association-based credit union with a total membership of less than 20,000 members at the time membership is sought with Texans Credit Union, and having an office within the boundaries of Highland Village, Flower Mound, Coppell, Carrollton, Hebron, Lewisville, The Colony, and Frisco, Texas on July 1, 1999), to be eligible for membership in the credit union.

An application was received from Southwest Resource Credit Union, Baytown, Texas, to expand its field of membership. The proposal would permit employees and members of the Escapees, Inc. to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9902365
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 21, 1999

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership

United Heritage Credit Union, Austin, Texas–See *Texas Register* issue dated January 29, 1999 (24 TexReg 620)

United Heritage Credit Union, Austin, Texas–See *Texas Register* issue dated January 29, 1999 (24 TexReg 620)

United Heritage Credit Union, Austin, Texas–See *Texas Register* issue dated January 29, 1999 (24 TexReg 620)

Community Credit Union, Plano, Texas–See *Texas Register* issue dated January 29, 1999 (24 TexReg 620)

Mid-County Teachers Credit Union, Port Neches, Texas–See *Texas Register* issue dated January 29, 1999 (24 TexReg 620)

Application for a Merger or Consolidation

TEC-Nine Credit Union and TEC & State Employees Credit Union–See *Texas Register* issue dated June 28, 1998 (23 TexReg 6756)

TRD-9902364
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 21, 1999

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Texas Department of Criminal Justice

Request for Qualifications

The Texas Department of Criminal Justice (TDCJ), acting as construction manager for the Texas Youth Commission (TYC), is seeking qualification statements from experienced architect-engineering firms interested in providing plans and specifications to design new construction projects, remodel existing facilities, and other maintenance activities at various locations throughout the state, pursuant to the provisions of the Government Code, Chapter 2254, Subchapter

A. TYC intends to enter into a requirements-type contract with one or more firms to provide such services on an as-needed basis through August 31, 2001, based on funds availability appropriated by the Texas Legislature.

Responses must be received no later than 3 p.m. on May 18, 1999.

Technical questions relative to the scope of work should be directed to Bill Gaines at (409) 294-6979. All request for a copy of the RFQ must be in writing to Iris Young, Contract Administrator, P.O. Box 4014 (Contracts), Spur 59 off of Hwy 75 North, Room 137, Huntsville, Texas 77340; (e-mail address: iris.young@tdcj.state.tx.us). Fax requests are acceptable.

TRD-9902332
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 20, 1999

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State Board of Dental Examiners

Correction of Error

The State Board of Dental Examiners proposed an amendment to 22 TAC §109.175. The rule appeared in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3009).

Due to Texas Register error, on page 3012, §109.175(b)(3)(D)(iii)(II), was published as "(II) Shall perform EKG monitoring of all patients with electrocardioscopy, except as provided in subparagraph (F) of this paragraph. of this section" it should read "(II) Shall perform EKG monitoring of all patients with electrocardioscopy, except as provided in subparagraph (F) of this paragraph."

Due to Agency error, on page 3014, §109.175(c)(3)(F)(i), language was omitted. It should read as "(i) In selected circumstances, parenteral deep sedation/general anesthesia may be utilized without first establishing an indwelling intravenous line or continuous EKG monitoring with electrocardioscopy or pulse oximetry. ..."

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Texas Department of Economic Development

Announcement of Availability of REMI Model

State agencies may use sophisticated policy analysis tool through agreement with the Texas Department of Economic Development.

The Texas Department of Economic Development has acquired the Regional Economic Models Inc.'s (REMI) model for the State of Texas. REMI is used throughout the United States to show impacts of economic and demographic changes on a regional economy resulting from public policy decisions regarding environmental laws, utility deregulation, business expansion, and taxes, among others. REMI contains historical population and demographic data going back to 1969 and includes a baseline forecast through 2030. REMI is a dynamic model of the U.S. and Texas economies and only requires a personal computer to operate.

Prior to use of the model, other state agencies will be required to sign an interagency agreement and reimburse the Texas Department of Economic Development with a portion of the annual maintenance fees for the model. REMI will deliver the Texas regional model to participating agencies after a secondary user's license has been purchased directly from REMI.

Agencies interested in beginning use of the REMI model in FY 2000 must submit a completed interagency contract by July 15, 1999.

Please contact Branner Steward at the Texas Department of Economic Development for additional information concerning the REMI model, the secondary user's license, and the interagency contract. Phone: 512-936-0291.

TRD-9902200
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: April 15, 1999

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Texas Education Agency

Request for Applications Concerning Public Law 103–382, Elementary and Secondary Education Act (ESEA) Title I, Part A - Capital Expenses, 1999–2000

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-99-011 from school districts that have incurred capital expenses since July 1, 1995, or will incur such expenses during the 1999-2000 school year, as a result of implementation of alternative delivery systems to comply with the requirements of Aguilar v. Felton in providing Title I, Part A, services to students attending private, religiously affiliated schools.

Description. Under Public Law 103-382, Title I, Part A, §1120(e), the term "capital expenses" means expenditures for noninstructional goods and services, such as: the purchase, lease, rental, and renovation of real and personal property (including, but not limited to, mobile educational units and leasing of neutral sites or space); insurance and maintenance costs; transportation; technician costs for the supervision of computer-assisted instruction (CAI); and other comparable goods and services. Under Title 34, Code of Federal Regulations (CFR), §200.16, capital expenses do not include the purchase of instructional equipment such as computers.

Dates of Project. The Title I, Part A*Capital Expenses project will be implemented during the 1999-2000 school year, starting no earlier than July 1, 1999, and ending no later than June 30, 2000.

Project Amount. The projected state total available for these projects is $908,904. These projects are funded 100% from Elementary and Secondary Education Act (ESEA), as amended by Public Law 103-382, Title I, Part A* Capital Expenses.

Selection Criteria. Applications submitted in response to this RFA must address all required components of the RFA. Applications are non-competitive and will be selected according to the following criteria: (1) Requests for funding to meet current-year capital expenses will be categorized as Priority 1. (2) Requests for funding to reimburse the Title I, Part A, program for prior-year capital expenses will be categorized as Priority 2. Only requests for prior- year expenses from school years 1995-96, 1996-97, 1997-98 and 1998-99 will be considered under Priority 2.

If the level of funding is insufficient to fund all eligible applicants under Priority 1, a ratably reduced share will be granted for Priority 1 expenses and no funds will be distributed under Priority 2. The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA # 701-99-011 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Sam Lester, Division of Student Support Programs, Texas Education Agency, (512) 463-9374.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Wednesday, June 30, 1999, to be considered.

TRD-9902352
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: April 21, 1999

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General Land Office

Notice of Request for Contract Services Proposal

The General Land Office (GLO) is contemplating the award of a contract to provide the following services:

A firm or consortium is sought that is capable of providing professional services in support of the Coastal Coordination Council's mission to improve beach and bay access along the Texas coast. This will include surveying existing beach and bay access points within the Texas Coastal Management Program (CMP) boundary in the following counties: Orange, Jefferson, Chambers, Harris, Galveston, Brazoria, Matagorda, Jackson, Victoria, Calhoun, Willacy, and Cameron. CMP funding will be used to compile information on current public and private access points, types of facilities, site location and condition, and adjacent land use. To this end, the qualified firm or consortium must, at a minimum, have the following attributes:

1. Knowledge of the Texas coast and experience working with government agencies, conservation groups, nonprofit organizations, academia, and the general public.

2. Knowledge of shoreline access issues in Texas.

3. Knowledge of coastal habitats along the Gulf coast.

4. Experience with resource inventory techniques.

5. Equipped with and trained in using a Geographic Information System (GIS) application (i.e., Arc/Info, ArcView, etc.).

6. Equipped with and trained in using a Global Positioning System (GPS) receiver.

7. Equipped with and trained in using Microsoft Access 97 for data management.

8. Equipped with and experienced in using a digital camera.

The award of a contract to provide such services is contingent upon funds becoming available to the GLO.

The providers will be evaluated and selected based on: (1) knowledge, experience, and capabilities in the areas described above; (2) ability to perform work within the required time constraints, and; (3) demonstrated and projected use of HUB vendors. The contract will be awarded in accordance with the procedure set forth in Texas Government Code, §2254.001 et seq.

Providers must be capable of entering into a contract within 14 days of selection and initiating work within 14 days of contract award. Interested persons may receive a Request for Qualifications packet by faxing (512) 475-0680, or write to the address given.

Deadline: Qualifications statements will be accepted until 5:00 p.m. Tuesday, June 1, 1999, at the General Land Office, Attention: Claire Randle, 1700 North Congress Ave., Room 617, Austin, Texas 78701-1495.

TRD-9902354
Larry R. Soward
Chief Clerk
General Land Office
Filed: April 21, 1999

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General Services Commission

Notice of Contract Airline Fares Request for Proposal

The General Services Commission (the "GSC") announces a Request for Proposals ("RFP") for Contract Airline Fares (RFP #9-0499AF) to be provided to the State of Texas pursuant to the Texas Government Code, Section 2171.052. Any contract which results from this RFP shall be for the term of September 1, 1999, through August 31, 2000.

Preproposal Conference: A preproposal conference will be held on Wednesday, April 28, 1999, in Austin, Texas. The conference is scheduled from 1:00 p.m. to 3:00 p.m. at the following address: General Services Commission, Central Services Building, Room 200B, 1711 San Jacinto Boulevard, Austin, Texas 78701. The purpose of the conference is to review the content of this RFP and to answer attendees questions.

Submission of Response to the RFP: Responses to the RFP shall be submitted to and received by the GSC Bid Services Department on or before 3:00 p.m., Central Daylight Savings Time, on May 19, 1999, and shall be delivered or sent to: The General Services Commission, Attn: Bid Services, RFP #9-0499AF, 1711 San Jacinto Boulevard, Room 180, Austin, Texas 78701, or P.O. Box 12047, Austin, Texas 78711-3047.

Evaluation Criteria: Evaluation of Proposals will be based on the criteria listed in the Request for Proposal. Evaluation will be performed by an evaluation team composed of persons designated by the GSC. The evaluation team will make a recommendation to the Division Director who shall determine and recommend to the Executive Director the proposer(s) chosen for contract award. Proposers to whom contracts are awarded will be notified by mail.

Copies of RFP: If you are interested in receiving a copy of the RFP, contact Ms. Gerry Pavelka, Program Director, at (512) 463-3559 to request a copy.

TRD-9902333
Judy Ponder
General Counsel
General Services Commission
Filed: April 20, 1999

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Texas Department of Health

Correction of Error

The Texas Department of Health proposed repeal of 25 TAC §229.221 and §229.222. The rules appeared in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2629).

Due to agency error, on page 2630, preamble left column, the cross-reference is reflected in paragraph 7 as the "Health and Safety Code, Chapter 4," and should read "The proposed repeals affect the Health and Safety Code, Chapter 431;".

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Notice for Public Comment for the Fiscal Year 2000 Title V Maternal and Child Health Grant Application and the Fiscal Year 2000-01 Genetics Resource Allocation Plan.

The Texas Department of Health (department), Associateship for Community Health and Resources Development, is requesting public comment for the fiscal year 2000 Title V Maternal and Child Health (MCH) Grant Application and the fiscal year 2000-01 Genetics Resource Allocation Plan, as part of the ongoing public input process. We need your suggestions about ways to improve the health of all women and children in Texas, including children with special health care needs (CSHCN). Texas Title V program is responsible for the provision of preventive and primary care services for pregnant women, mothers and infants; preventive and primary care services for children; and specialized services for CSHCN.

A year ago, the federal Maternal and Child Health Bureau conducted a major overhaul of the Title V Application Guidance (instructions) based on a system of national and state performance measures for all state Title V programs. Currently, Texas Title V program is responsible for monitoring and reporting on a set of 18 required national performance measures and a set of eight custom state performance measures. For each performance measure, Title V program must: (1) set annual targets for the next five years; and (2) develop activity plans and allocate resources to reach the targets.

The packet, which includes performance measures and activity plans, may be downloaded for your review from: http://www.tdh.state.tx.us/mch/mch_home.htm. In addition to this electronic request, we are mailing about 1,400 packets to public health leaders and interest groups, contractors, and MCH/CSHCN services consumers.

Deadline for public comment is 5:00 p.m., Central Daylight Saving Time, May 14, 1999. Comments may be sent via E-mail to 2000_titlev@tdh.state.tx.us or by regular mail to Fouad Berrahou, Ph.D., Health Planner, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

TRD-9902339
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 20, 1999

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Notice of Request for Proposals for Case Management and/or Community/Family Resource Services for Children with Special Health Care Needs

INTRODUCTION

The Texas Department of Health (department) announces a Request for Proposals (RFP) for the provision of case management and/or community/family resource services for Children with Special Health Care Needs (CSHCN) in Public Health Regions (PHR) 6 and 5S. For the purpose of this RFP, case management is defined as the assessment of the child's overall service needs and the development of a plan for meeting these needs. The services will be family centered, community-based, and culturally competent, and will assist children who need a variety of services. To be eligible for CSHCN case management, a child must be under the age of 21, a resident of Texas, have a special health care need, and not be able to access other case management services. Community and family resource activities should build community infrastructure and /or educate and support CSHCN and their families in promoting their health and well being. The RFP provides a listing of example activities.

ELIGIBLE APPLICANTS

Eligible applicants include public and private agencies and organizations which are current or potential service providers for CSHCN in PHR 6 and 5S, including present CSHCN case management contractors.

AVAILABILITY OF FUNDS

Approximately $384,000 is expected to be available to fund three to six proposals.

PROJECT AND BUDGET PERIODS

Contracts will be funded for a 12-month period beginning September 1, 1999 through August 31, 2000.

REVIEW AND AWARD CRITERIA

Each application will be screened for eligibility and completeness, as well as satisfactory fiscal and administrative history. Applications deemed ineligible, or that arrive after the deadline, will not be reviewed.

Eligible, complete applications will be reviewed and scored by evaluators, according to the quality and thoroughness of the application and the demonstrated potential of the applicant to provide quality case management and/or community/family resource services.

SUBMISSION REQUIREMENTS

The original and one copy must be received by Marjorie Doubleday, Bureau of Children's Health, Bureau of Nutrition Services, Contract Management Section, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, by 5:00 p.m. Central Daylight Saving Time on May 28, 1999. An additional copy must be received by Sam B. Cooper, III, Director of Social Work Services, PHR 6 and 5S, Texas Department of Health, 5425 Polk, Suite J-CIDC/SW, Houston, Texas 77023-1497 by the same deadline.

TO OBTAIN A COPY OF THE REQUEST FOR PROPOSALS

A copy of the RFP will be sent to current Texas Department of Health CSHCN case management contractors in PHR 6 and 5S. The RFP will be available at http://www.tdh.state.tx.us/child/homecide.htm on April 30, 1999. To request a copy of the RFP, contact Marjorie Doubleday, Bureau of Children's Health, Bureau of Nutrition Services, 1100 West 49th Street, Austin, Texas 78756; Telephone (512) 458-7111, extension 3028; or E-mail address majorie.simmons@tdh.state.tx.us.

TRD-9902329
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 20, 1999

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Notice of Revocation of Certificates of Registration

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 certificates of registration: Texas Industrial Laboratories, Fort Worth, R06987, March 30, 1999; UIC, Inc., Fort Worth, R15956, March 30, 1999; Highlands Chiropractic Clinic, Highlands, R18209, March 30, 1999; Comprehensive Foot Care, San Antonio, R21366, March 30, 1999; Cosmetic Laser Center, San Antonio, Z01111, March 30, 1999.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9902330
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 20, 1999

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Notice of Revocation of the Radioactive Material License of Construction Services

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: Construction Services, San Angelo, L04752, March 30, 1999.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9902331
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 20, 1999

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Texas Department of Housing and Community Affairs

Office of Colonia Initiatives - Notice of Determination of Certain Counties

In accordance with Subchapter E, Chapter 5, Texas Property Code, as added by Chapter 994, Acts of the 74th Legislature, the Texas Department of Housing and Community Affairs has determined that the requirements governing residential contracts for deed in Subchapter E will apply to the following counties in Texas:

1. Brooks
2. Cameron
3. Coleman
4. Culberson
5. Dimmit
6. Duval
7. El Paso
8. Frio
9. Hidalgo
10. Jim Hogg
11. Jim Wells
12. Kinney
13. Kleberg
14. La Salle
15. Maverick
16. Mitchell
17. Presido
18. Reeves
19. San Patricio
20. Starr
21. Uvalde
22. Val Verde
23. Ward
24. Webb
25. Willacy
26. Winkler
27. Zapata
28. Zavala

Each county listed above is within 200 miles of an international border and has a per capita income that averaged 25 percent below the state average for the years 1994, 1995, and 1996 and an unemployment rate that averaged 25 percent above the state average for the years 1996, 1997, and 1998.

The Texas Department of Housing and Community Affairs has also determined that the requirements contained in Subchapter E will apply to the counties listed above beginning June 1, 1999.

TRD-9902338
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 20, 1999

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services adopted amendments to 40 TAC §§12.2, 12.5, 12.7, 12.8, 12.17, 12.23, and 12.24. The rules appeared in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2951).

Due to agency error, subsection (g) was published incorrectly. The subsection should read as follows:

"(g) DHS imposes sanctions against contractors that sponsor day care homes who fail to disburse program funds to providers in accordance with program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater. DHS imposes sanctions according to the following procedure:"

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for AMERICAN TRANSPORT INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Addison, Texas.

Application to change the name of AMERICAN TRAVELLERS LIFE INSURANCE COMPANY to CONSECO SENIOR HEALTH INSURANCE COMPANY, a foreign life company. The home office is in Carmel, Indiana.

Application to change the name of PENNSYLVANIA MILLERS MUTUAL INSURANCE COMPANY to PENN MILLERS INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Wilkes-Barre, Pennsylvania.

Application to change the name of FINANCIAL BENEFIT LIFE INSURANCE COMPANY to AMERICAN SAVERS LIFE INSURANCE COMPANY, a foreign life company. The home office is in Boca Raton, Florida.

Any objections must be 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-9902198
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 14, 1999

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Liberty Insurance Corporation proposing to use rates for personal automobile insurance that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated Article 5.101, §3(g). For classes 6A, B, C & AF, they are proposing a rate of +49.7% above the benchmark for BI and PD; +44% above the benchmark for PIP and Medical Payments; +30% above the benchmark for UM; and +109% above the benchmark for Comprehensive and Collision.

For classes 1A, 1A-2, 1B-1, 1B-2, 1C, 1C-2, 1AF, 1AF-2, 2A-1, 2A-2, 2AF-1, 2AF-2, 2D, 2DF, 2C-1, 2C-2, 2CF-1, 2CF-2, 3, 3A, 8, and 8A, they are proposing a rate of +67.8% above the benchmark for BI and PD; +60% above the benchmark for PIP and Medical Payments; +30% above the benchmark for UM; and +109% above the benchmark for Comprehensive and Collision.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701. Objections/comments must be made within 30 days after publication of this notice.

TRD-9902363
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

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Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2407 on June 1, 1999 at 9:00 a.m, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Commercial Lines Statistical Plan. The proposed changes are necessary in order to (a) make revisions to company reporting instructions to correct the name and address of TDI's Commercial Lines Statistical Agent, (b) require that unused portions of numeric and alphanumeric fields be zero filled, (c) require that insurers report data via diskette in ASCII fixed-length format only, (d) remove references to Annual Statement Line 25 (Glass), (e) add a footnote for Commercial Automobile Employer's Non-ownership classes to indicate that these classes are not applicable for Liability Assigned Risks, (f) update General Liability Premises & Operations and Products & Completed Operations classes, exposure bases and codes, (g) add ISO Texas Fire Subline Codes, (h) modify descriptions for Time Element coverage codes on run-off transactions, (i) add Basic Group II construction definitions and rating categories, (j) clarify that construction definitions and classes for all coverages other than those including wind should reflect fire construction criteria, (k) add class codes for Bobtail and Deadhead coverages as part of Special Types, (l) add class codes for Commercial Automobile Special Types under Leasing and Rental Concerns and for short term motorcycles, motorbikes and similar vehicles, (m) add a class code under Commercial Automobile Special Types for Rental Car Companies, and (n) make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference P-0499-04-I) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-04-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902342
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

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The Commissioner of Insurance will hold a public hearing under Docket Number 2408 on June 1, 1999 at 9:00 a.m in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Statistical Plan for Residential Risks. The proposed changes are necessary in order to (a) add a field and statistical codes for the Texas Windstorm Insurance Association (TWIA) Building Code Credits, (b) add additional Optional Credits statistical codes for Dwelling coverage, (c) add a field and statistical codes for Law and Ordinance Coverage, (d) remove the Texas Place Code Listing from the Statistical Plan and reference it as a separate document, and (e) make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference P-0499-05-I) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-05-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902343
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

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The Commissioner of Insurance will hold a public hearing under Docket Number 2409 on June 1, 1999 at 9:00 a.m, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the American Insurance Association (AIA) proposing amendments to the Texas Statistical Plan for Residential Risks. The changes are being proposed in order to reduce statistical reporting burdens and to simplify some reporting requirements. The changes proposed are: (a) to limit reporting requirements for "roof construction" to policies which receive a premium credit for hail-resistant roofs; (b) to combine roof construction types "aluminum", "steel", "copper", and "roll roofing" into one category termed "metal"; and (c) to eliminate "recycled roofing products" and "single ply membrane systems" from the list of roof construction options. AIA's petition (Reference P-0499-03) was filed on April 19, 1999.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the AIA petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0499-03).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC 105-105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

TRD-9902341
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 21, 1999

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission submitted Notice of Public Hearing. The hearing appeared in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2978).

Due to agency error:

On page 2978, second paragraph, first sentence, the reference to the company should have read "...GNB Technologies, Inc. (formerly Gould National Battery, Incorporated)...," rather than "...Gould National Battery, Incorporated (GNB, now GNB Technologies, Inc.)..."

On page 2978, fifth paragraph, fourth sentence, the reference should have been to "...Agreed Order 92–09(k)," rather than to "...Agreed Orders 92–09(k)."

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Notice of Application to Appropriate Public Waters of the State of Texas

The following notice of application for a permit to appropriate Public Waters of the State of Texas was issued on April 9, 1999.

Jay E. Baker, Baker Family River Farm, 421 School Street, Kenedy, Texas 78119 has applied for a permit (Application Number 19-5622) pursuant to §11.121 of the Texas Water Code and 30 Texas Administrative Code §295.10 et seq., for authorization to divert and use not to exceed 240 acre feet of water per annum to irrigate 160 acres of land out of a 311 acre tract in Karnes County, Texas. The diversion of water will be at a rate of 750 gallons per minute (1.53 cfs) directly from the San Antonio River, San Antonio River Basin, approximately 12 miles east-southeast of Karnes City, Texas.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public

meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, Mail Code 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same above address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1- (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902334
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 20, 1999

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: David Aguero; DOCKET NUMBER: 1998-0741-OSI-E; ENFORCEMENT NUMBER: 3502; LOCATION: 2511 Encreek Road, Houston, Harris County, Texas; TYPE OF FACILITY: landscape irrigation operation; RULES VIOLATED: 30 TAC §285.33(c)(2)(D) by failing to install the proper number of spray irrigation drainfields required for the minimum surface application area; and 30 TAC §285.58(a)(10) by failing to perform work on the on-site sewage facility, without just cause, for 30 consecutive days; PENALTY: $2,656; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: T.D. Allison, Incorporated; DOCKET NUMBER: 1998-1158-PST-E; TNRCC ID NUMBER: 11089; LOCATION: 203 South Kent, Gorman, Eastland County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.22(a) by failing to pay outstanding UST fees for the fiscal years 1990 through 1997; and 30 TAC §334.7(d)(l)(B) by failing to update its UST registration records to reflect that the STs were no longer in service; PENALTY: $9,000; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3)COMPANY: Tom Blankenship; DOCKET NUMBER: 1996-1875-LII-E; TNRCC ID NUMBER: LI0006077; LOCATION: 2502 Redbrook, Garland, Dallas County, Texas; TYPE OF FACILITY: landscape irrigation system; RULES VIOLATED: the Code, §34.007(a) by failing to obtain a valid certificate of registration as a licensed irrigator before selling, designing, consulting on, and/or installing a landscape irrigation system; PENALTY: $2,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: Young Man Kwon and Mohammed Younous dba 3 Star Quickway; DOCKET NUMBER: 1998-0782-PST-E; TNRCC ID NUMBER: 07307; ENFORCEMENT NUMBER: 12710; LOCATION: 4801 Wichita Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: retail gasoline dispensing facility; RULES VIOLATED: 30 TAC §115.241 and the Texas Health and Safety Code (THSC), §382.085(b) by failing to install an approved Stage II vapor recovery system which is certified to reduce the emissions of volatile organic compounds to the atmosphere by at least 95%; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475 by failing to equip tanks with proper overfill prevention; 30 TAC §334.50(b)(1)(A) and

(2)(A) and the Code, § 26.3475 by failing to have a release detection method capable of detecting a release from the tanks portion of the UST system and by failing to have a release detection method capable of detecting a release from the pressurized piping of the ST system; 30 TAC § 334.50(d)(B)(iii)(I) and the Code, §26.348 by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.7(a)(1) and the Code, §26.346 by failing to register with the commission, on authorized commission forms, USTs in existence on or after September 1, 1987; and 30 TAC §334.22(a) and the Code, §26.358 by failing to make payments on annual facility fees; PENALTY: $16,000; STAFF ATTORNEY: Lisa Zintsmaster Hernandez, Litigation Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9902323
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 20, 1999

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, l999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: AC Liquidating Corporation; DOCKET NUMBER: 1998-1414-IHW-E; TNRCC NUMBER: 31618; LOCATION: 11011 Fairmont Parkway, La Porte, Harris County, Texas; TYPE OF FACILITY: hazardous waste treatment and storage facility; RULES VIOLATED: 30 TAC § 335.4 and the Code, §26.121 by failing to address confirmed groundwater contamination from two closed hazardous waste management units; 30 TAC § 335.112(a)(7) and 40 Code of Federal Regulations (CFR), § 265.143 by failing provide an estimate and proof of financial assurance with the Post-Closure Care permit application; and 30 TAC § 335.112(a)(5) and 40 CFR, § 265.93 by failing to conduct groundwater monitoring during the first six months of 1998; PENALTY: $60,000; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-4706; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 676-3500.

(2)COMPANY: Ashcraft-Southern Marble Company, Incorporated; DOCKET NUMBER: 1998-0618-IHW-E; TNRCC NUMBER: 69607; LOCATION: 13822 Highway 155 South, Tyler, Smith County, Texas; TYPE OF FACILITY: cultured marble manufacturing facility; RULES VIOLATED: 30 TAC §335.4 and the Code, §26.121 by causing, suffering, allowing, and/or permitting the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to the waters in the state; 30 TAC §335.6 by failing to update the Notice of Registration for specific wastes and waste management units at the facility; 30 TAC §335.9(a)(1) and (2) by failing to submit an annual waste summary form for 1997 and 1996, correct and resubmit the 1995 annual waste summary, and keep records of waste management activities; 30 TAC §335.62, incorporating 40 CFR, § 262.11 and 30 TAC § 335.431, incorporating 40 CFR, §268.7 by failing to perform required hazardous waste determinations, determine and record which of its hazardous wastes are restricted from land disposal, and determine if any restricted wastes meet established treatments standards; and 30 TAC §335.474 by failing to develop a source reduction and waste minimization plan; PENALTY: $9,375; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3)COMPANY: The City of Groveton; DOCKET NUMBER: 1998-0964-MSW-E; TNRCC ID NUMBER: 898; ENFORCEMENT ID NUMBER: 12800; LOCATION: 1.3 miles southeast of US Highway 287 and Farm to Market Road 255 on the east side of Kickapoo Road, Groveton, Trinity County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §330.252(c) by failing to complete final cover of the landfill; and 30 TAC §330.111 by deviating from an approved closure plan; PENALTY: $4,375; STAFF ATTORNEY: Cecily Small Gooch, Litigation Division, MC R-4, (817) 469-6750; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(4)COMPANY: Dennis Hakes dba Hakes Holstein Heaven; DOCKET NUMBER: 1997- 1164-AGR-E; TNRCC NUMBER: 03087; LOCATION: State Highway 6 on Farm to Market Road 914, Dublin, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: the Code, §26.136 and Special Provision Number 13 of TNRCC Permit Number 03087 by failing to furnish certification, by a Texas registered engineer, that the facilities had been constructed in accordance with the requirements of the permit; PENALTY: $6,250; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Michael Meazell dba Shady Shores Water System and Ridgewood Village Development Company, Incorporated; DOCKET NUMBER: 1997-1160-PWS-E; TNRCC NUMBER: 1580014; ENFORCEMENT NUMBER: 12005; LOCATION: four miles east of Highway 256 and Farm to Market Road 450 Junction, Marion County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.46(f)(l)(A) by failing to maintain a free

chlorine residual of 0.2 milligrams per liter in the far reaches of the distribution system at all times; 30 TAC §290.46(e) by failing to operate the system under a "D" certified water works operator; 30 TAC §290.46(t) by failing to maintain the distribution system lines in a watertight condition; 30 TAC §290.44(a)(4) by failing to install the distribution lines a minimum of 24 inches below ground surface; 30 TAC 290.43(c)(4) by failing to provide a water level indicator for the ground storage tank; 30 TAC §290.41(c)(3)(B) by failing to extend the wellhead casing a minimum of 18 inches above the natural ground surface; 30 TAC §290.41(c)(1)(A) by failing to locate the ground water well a minimum of 150 feet from a septic tank drain field; 30 TAC §290.46(j)(3) by failing to have proper completed customer service inspections on file; 30 TAC §290.46(p) by failing to conduct annual inspection of the ground storage and pressure tanks and by failing to retain the records for a minimum of five years; 30 TAC §290.46(m) by failing to initiate a maintenance program for cleanliness of the plant facilities; 30 TAC §290.41(c)(3)(P) by failing to provide an all weather access road to the well site; 30 TAC §290.42(i) by failing to provide certification of the hypochlorite solution from an organization accredited by American National Standards Institute; and 30 TAC §290.45(b)(1)(C) by failing to provide the Minimum Water System Capacity Requirements; PENALTY: $10,313; STAFF ATTORNEY: Lisa Zintsmaster Hernandez, Litigation Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6)COMPANY: Pilgrim's Poultry, G.P.; DOCKET NUMBER: 1998-0453-AGR-E; TNRCC ID NUMBER: 4032; LOCATION: Farm to Market Road 556, Camp County, Texas; TYPE OF FACILITY: two caged egg layer operations; RULES VIOLATED: 30 TAC §321.33(d) by failing to acquire a permit for the two caged egg layer operations; PENALTY: $31,250; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7)COMPANY: Estate of Joe Berry Pyle and Ralph Watson; DOCKET NUMBER: 1998- 0337-MSW-E; ENFORCEMENT ID NUMBER: 12418; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: solid waste facility; RULE VIOLATED: 30 TAC §330.04(a) by causing, suffering, allowing, or permitting the collection, storage, handling, transportation, processing, removal, or disposal of municipal solid waste upon their property without a TNRCC permit or other authorization, specifically, the facility received municipal solid waste in the form of used building materials deposited in a trench at the facility; PENALTY: $6,250; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8)COMPANY: Earl Scheib Paint and Body; DOCKET NUMBER: 1998-0383-AIR-E; TNRCC ID NUMBER: EE-1473-M; LOCATION: 5001 Dyer Street, El Paso, El Paso County, Texas; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: 30 TAC §115.121 and the Texas Health and Safety Code (THSC), §382.085(b) by exceeding the allowable emission limit for volatile organic compounds for the basecoat/clearcoat systems; and 30 TAC §116.115(b), §106.436(9)(c), (12), and (16), and THSC, §382.085(b) by failing to store solvents in closed containers, installing a vent stack that is less than 50 feet from residences in the area, and failing to maintain records relating to solvent and paint purchases and material safety data sheets; PENALTY: $6,375; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(9)COMPANY: West Carwash, LTD. and Mr. Jimmy Kim; DOCKET NUMBER: 1998- 0684-PST-E; TNRCC ID NUMBER: 50264; LOCATION: 9300 Westheimer, Houston, Harris County, Texas; TYPE OF FACILITY: retail gasoline dispensing facility; RULES VIOLATED: 30 TAC §115.245(1)(A) and THSC, §382.085(b) by failing to conduct Stage II full compliance testing within 30 days of installation of Stage II equipment; 30 TAC §115.248(1) and THSC, §382.085(b) by failing to ensure that at least one representative received training and instruction in the operation and maintenance of a Stage II vapor recovery system; 30 TAC §115.242(3)(C)(iii) and (4) and THSC, §382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition including repairing or replacing nozzle boots with a slit more than one-inch in length and repairing or replacing product line hoses to ensure no gasoline leaks exist anywhere in the dispensing equipment or Stage II vapor recovery system; and 30 TAC §115.246(1), (3), (6), and (7)(A), and THSC, §382.085(b) by failing to maintain a California Air Resources Board Executive Order on premises, maintain a record of maintenance, maintain a record of Stage II daily inspections, and maintain records at the facility to be made immediately available for review; PENALTY: $5,850; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9902322
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 20, 1999

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Notice of Opportunity to Comment on ShutDown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code (the Code), §26.3475 authorizes the TNRCC to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails by to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. Pursuant to the Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, l999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or consideration that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed Shutdown Orders is available for public inspection at both the TNRCC's Central Office, located at

12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, l999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in **writing**.

(1)FACILITY: Best Oil & Gas; OWNER: Petro-Mex, Incorporated; DOCKET NUMBER: 1999-0216-PST-E; TNRCC ID NUMBER: 34084; LOCATION: 505 East Schunior, Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: retail; RULES VIOLATED: 30 TAC §334.49(e) by failing to have appropriate corrosion protection records for the UST system so that appropriate corrosion protection methods could be determined; 30 TAC § 334.50(b)(2) by failing to monitor piping in a manner designed to detect releases from any portion of the UST's piping system; and 30 TAC §334.50(b)(1)(A) by failing to monitor USTs for releases at a frequency of at least once every month, not to exceed 35 days between each monitoring; PENALTY: shutdown order; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2)FACILITY: Smiley's; OWNER: Glen Lester Bonds; DOCKET NUMBER: 1999-0223- PST-E; TNRCC ID NUMBER: 13441; LOCATION: 114th Street and Avenue P, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.49(a) by failing to provide proper corrosion protection for the UST systems at the facility; 30 TAC §334.50(a)(1)(A) by failing to provide a proper release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other ancillary equipment; and 30 TAC §334.51(b)(2)(B) by failing to provide proper spill containment equipment for the UST systems at the facility; PENALTY: shutdown order; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(3)FACILITY: W.W. Grocery; OWNER: Benda Investments, Incorporated and Ali Peajani; DOCKET NUMBER: 1999-0327-PST-E; TNRCC ID NUMBER: Facility Number 0030707; LOCATION: 300 North Main, Hutchins, Dallas County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide proper release detection for the pressurized piping associated with the UST systems; 30 TAC §334.51(b)(2)(C) by failing to provide proper overfill prevention equipment for the UST systems; and 30 TAC §334.49(a) by failing to provide proper corrosion protection for the UST systems; PENALTY: shutdown order; STAFF ATTORNEY: Tracy Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9902321

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 20, 1999

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Notice of Water Quality Applications.

The following notices were issued during the period of April 12, 1999 through April 19, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **within 30 Days of the Issue Date of the Notice.**

AMBER TERMINAL, INC. has applied for a renewal of TNRCC Permit Number 00570, which authorizes the discharge of stormwater runoff on an intermittent and flow variable rate via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0000507 and TNRCC Permit Number 00570. The applicant operates a petroleum product and/or an ammonium nitrate fertilizer storage and shipping terminal. The plant site is located at the northwest corner of the intersection of 28th Street (State Highway Business 183) and North Sylvania Avenue in the City of Fort Worth, Tarrant County, Texas.

WEST TEXAS UTILITIES COMPANY has applied for a major amendment to TNRCC Permit Number 00997 to authorize: revision of an effluent limitation for daily maximum temperature from an instantaneous measurement to a flow weighted maximum daily temperature, removal of daily average and daily maximum flow rate limitations, revision of the laboratory test method required for the measurement of total residual chlorine applicable to discharges via Outfall 001; to provide a credit for the intake of total suspended solids in setting effluent limitations applicable to discharges via Outfall 002; and to delete authorization of storm water Outfalls 003 and 004. The current permit authorizes the discharge of once through cooling water at a daily average flow not to exceed 57,000,000 gallons via Outfall 001, the discharge of low volume wastewater at a variable rate of discharge via Outfall 002, and the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 003 and 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0001406 issued on July 13, 1983 and TNRCC Permit Number 00997 issued February 12, 1993. The applicant operates the Oak Creek Power Station. The plant site is located adjacent to Oak Creek Reservoir approximately ten miles north of the City of Bronte, Coke County, Texas.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **within 30 Days After Newspaper Publication of the Notice.**

CITY OF GOREE has applied for a renewal of TNRCC Permit Number 10102 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. The plant site is located on the east side of U.S. Highway 277, approximately 1/2 mile east of the intersection of U.S. Highway 277 and State Highway 266 in Knox County, Texas.

CITY OF ARANSAS PASS has applied for a major amendment to TNRCC Permit Number 10521002 to add Outfall 002, which would discharge treated wastewater at a daily average flow not to exceed 1,000 gallons per day. Outfall 001 will authorize a discharge of treated wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The plant site is located at the corner of Ransom Drive and Ocean Drive in the City of Aransas Pass in San Patricio County, Texas.

CINCO MUNICIPAL UTILITY DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 13558-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,690,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,690,000 gallons per day. The plant site is located approximately 2.0 miles north and 3.25 miles east of the intersection of Farm to Market Road 723 and Farm to Market Road 1093 in Fort Bend County, Texas.

THOUSAND TRAILS, INC., 2711 LBJ Freeway, Suite 200, Dallas, Texas 75234, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination system (NPDES) Permit Number TX0086665 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12349 001. The draft Permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12349 001 will replace the existing NPDES Permit Number TX0086665 issued on April 17, 1987, and TNRCC Permit Number 12349001. The plant site is located approximately 3.1 miles west of the intersection of Farm to Market Road 830 and Interstate Highway 45, 1.3 miles west southwest of the intersection of Farm to Market 830 and Old Willis-Montgomery Road and 1000 feet northwest of the intersection of Old Willis Montgomery Road with the shoreline of Lake Conroe in Montgomery County Texas. The treated effluent Is discharged to Lake Conroe in Segment Number 1012 of the San Jacinto River Basin. The designated uses for Segment Number 1012 are high aquatic life uses, public water supply and contact recreation.

TOSHIBA INTERNATIONAL CORPORATION has applied for a renewal of TNRCC Permit Number 03153, which authorizes the discharge of treated sanitary wastewater and washwater at a daily average flow not to exceed 50,000 gallons per day via Outfall 001, and once through cooling water at a daily average flow not to exceed 50,000 gallons per day via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0074292 issued on January 29, 1988, and TNRCC Permit Number 03153. The applicant operates a facility which manufactures electric motors, inverters, and other electrical products. The plant site is located at the southwest corner of the intersection of West Little York Drive and Eldridge Parkway, in the extraterritorial jurisdiction of the City of Houston, Harris County, Texas.

WEST TEXAS UTILITIES COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 00963 to authorize the removal of biomonitoring requirements at Outfall 001 and to use an alternative test method for total residual chlorine analysis at Outfall 001. The current permit authorizes the discharge of condenser cooling water at a daily average flow not to exceed 253,800,000 gallons per day via Outfall 001 which will remain the same; low volume wastewater on an intermittent and flow variable basis via Outfall 002 which will remain the same; and stormwater on an intermittent and flow variable basis via Outfalls 003, 004, and 005 which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0001392 issued on June 14, 1991, and TNRCC Permit Number 00963. The applicant operates the Paint Creek Power Plant, a steam electric generating station. The applicant has also requested a temporary variance to the existing water quality standards for the water quality based criteria for aluminum for Lake Stamford, in Segment Number 1235 of the Brazos River Basin. The plant site is located approximately two miles south of the east end of FM Road 2082, on the northeast side of Lake Stamford, Haskell County, Texas.

OTTO MARINE ENTERPRISE, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 03448 which authorizes the discharge of barge cleaning and petroleum contaminated wastes from offsite facilities and treated process stormwater at daily average flow not to exceed 8,000 gallons per day via Outfall 001. The applicant operates a facility that treats barge cleaning wastes and offsite petroleum products. The plant site is located at 17818 Riverside Street, one-fourth mile south of Interstate Highway 10 and one mile west of the intersection of Interstate Highway 10 and Crosby-Lynchbury Road, Harris County, Texas.

OXID, L.P. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 02102, which authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0075060 issued on November 22, 1996, and TNRCC Permit Number 02102. The applicant operates a plant which manufactures, distills, and blends glycols and glycol ethers. The plant site is located at the southeast corner of the intersection of Loop 610 and the Houston Ship Channel, at 101 Concrete Street, in the City of Houston, Harris County, Texas.

ELG METALS SOUTHERN, INC., 15135 Jacintoport Boulevard, Houston, Texas 77015, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 03324 to: substitute an effluent limitation for total organic carbon for the existing effluent limitation for chemical oxygen demand; to increase the permitted effluent limitations for oil and grease, total copper, total lead, total nickel, and total zinc; and to alter the monitoring point applicable to discharges via Outfall 001. The current permit authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 001 which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace NPDES Permit Number TX0106861 (unissued) and TNRCC Permit Number 03324 issued on March 7, 1997. The applicant operates a scrap metal reclaiming facility.

EXXON COMPANY USA has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 00592 to authorize an increase in the discharge of facility wastewater from a daily average flow not to exceed 27,500,000 gallons per day to a daily average flow not to exceed 30,000,000 gallons per day via Outfall 001; and to authorize an increase in mass limitations for biochemical oxygen demand (five days), total suspended solids, oil and grease, total organic carbon, phenolic compounds, ammonia (as N), sulfide, total chromium, and hexavalent chromium at Outfall 001. The current permit authorizes the discharge of process wastewater, storm water runoff, and groundwater at a daily average flow not to exceed 27,500,000 gallons per day via Outfall 001; commingled storm water runoff and process water on an intermittent and flow variable basis via Outfall 002 which will remain the same; and regenerate water from a demineralizer plant at a daily average flow not to exceed 2,500,000 gallons per day via Outfall 003 which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0006271 issued on January 23,

1998, and TNRCC Permit Number 00592. The applicant operates an integrated petroleum refinery and organic chemical manufacturing facility, and receives compatible wastes from an adjacent sulfuric acid manufacturing plant. The plant site is located at 2800 Decker Drive, adjacent to the Houston Ship Channel, in the City of Baytown, Harris County, Texas.

TRD-9902337
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 20, 1999

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Notice of Water Right Application

The following notices of application for an amendment to a Certificate of Adjudication were issued on April 14, 1999.

The **City of Austin**, P.O. Box 1088, Austin, Texas 78767 has applied to amend Certificate of Adjudication Number 14-5471, as amended once. The certificate currently includes authorization for the City to maintain a dam (Longhorn Dam) and reservoir (Town Lake) on the Colorado River in Travis County approximately 1.4 miles southeast of the County Courthouse in Austin, Texas and to divert, circulate and recirculate water from the perimeter of the lake at an unspecified maximum rate for industrial (cooling) purposes. This diversion authorization is without limitation as to amount, provided that not more than 24,000 acre-feet of water per annum is consumed. The time priority for the impoundment of water in Town Lake and use of water for industrial (cooling) purposes from the lake is March 5, 1959. The applicant seeks to amend Certificate Number 14-5471, as amended, by adding two downstream diversion points that would allow the City the option of furnishing a portion of the cooling water needed at the Fayette Power Project in Fayette County near La Grange, Texas. The City of Austin and the Lower Colorado River Authority (LCRA) are partners in the Fayette Power Project. One of the requested additional diversion points is on the Colorado River and is the same point included in LCRA's Certificate of Adjudication Number 14-5474, which allows diversion of water from the river to LCRA's Cedar Creek Reservoir for industrial (cooling) purposes at the Fayette Power Project. Cedar Creek Reservoir is on Cedar Creek, a tributary to the Colorado River. The other diversion point included in the City's application is from the perimeter of Cedar Creek Reservoir. The requested diversion point on the river is described as being on the east bank of the River in the J.M. Hensley Survey, Abstract Number 54. This point is essentially at the Cedar Creek and Colorado River confluence and is approximately 120 river miles downstream of Longhorn Dam. No other changes are requested.

Martin J. Northern and wife, Lesbia E. Northern, Route 1, Box 656-B, Wolfforth, Texas 79382, have applied to amend Certificate of Adjudication Number 14-2471 which was issued to R.A. Hafner on August 31, 1983. The certificate authorized owners, with a time priority of August 15, 1961, the diversion and use of not to exceed 160 acre-feet of water per annum from a four points on the on the Colorado River at a maximum rate of 2.45 cfs (2600 gpm) to irrigate a maximum of 107 acres of land per annum in Concho County, Texas. Pursuant to an Earnest Money Contract for the Sale and Purchase of Water Rights dated July 22, 1998, Commission records have been changed to indicate ownership of the certificate by Martin J. Northern and wife, Lesbia E. Northern (applicants). Applicants seek to amend Certificate Number 14-2471 by moving the authorized irrigation water rights and diversion point approximately 11 miles downstream and changing the place of use to applicants' land. The new diversion point will be located within Coleman County, Texas. The water will be used to irrigate a maximum of 160 acres of land out of a 195.5 acre tract of land in Coleman County, Texas.

Written **public comments and requests** for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, **by May 4, 1999**. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by May 4, 1999. The Executive Director can consider approval of the application unless a written request for a contested case hearing is filed by May 4, 1999.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1- (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902336
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 20, 1999

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Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to Public Utility Commission Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 13, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company's Notification to Institute a Single Rate Residence Optional Calling Plan for Residence Customers Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20735.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public tility Commission of Texas that it is instituting the Single Rate Residence Optional Calling Plan. This Long Distance Message Telecommunications Service Optional Calling Plan (OCP) offers residence customers, for a monthly charge of $4.95, unlimited intraLATA toll calling any time of the day at twelve cents per minute. Customers who subscribe to THE WORKS or Basics can subscribe to this same twelve cents per minute toll plan for only $1.95 per month. The requested effective date of this tariff is May 15, 1999. SWBT has provided notification of this OCP to the Local Service Providers (LSP's). The LSP's will be provided the wholesale discount rate.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902314
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 16, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company to Institute Promotional Rates for Business Customers Newly Subscribing to the Per Minute; 2-Hour or 5-Hour MaxiMizer™ 800 Plans Between May 16, 1999 and December 31, 1999 Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20754.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public tility Commission of Texas that it is instituting and extending the present promotional rates for business customers newly subscribing to the Per Minute; 2-Hour or 5-Hour MaxiMizer™ 800 plans between May 16, 1999 and December 31, 1999. During the promotional period, new six-month subscribers to the Per Minute MaxiMizer™ 800 plan will receive a one-time credit of $15.00. New six-month subscribers of the 2-Hour MaxiMizer™ 800 plan will receive a one-time credit of $30.00. New twelve-month subscribers to the 5-Hour MaxiMizer™ 800 plan will receive a one-time credit of $60.00. SWBT has provided notification of this promotion to the Local Service Providers (LSP's). The LSP's will be provided the wholesale discount for these MaxiMizer™ 800 promotions.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902315
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 1999

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Notices of Applications for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 12, 1999, pursuant to Public Utility Commission Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of U.S. Telephone Holding, Inc. doing business as Sage Telecom for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103. Project Number 19552.

The Application: U.S. Telephone Holding, Inc. doing business as Sage Telecom's (Sage) intraLATA plan provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation. Sage provides local exchange service to end users in the territory of Southwestern Bell Telephone Company (SWBT) utilizing unbundled network elements leased from SWBT under a Service Provider Certificate of Operating Authority (SPCOA). The commission has recently ordered SWBT to implement intraLATA equal access by May 7, 1999. Sage states that it will provide intraLATA equal access to its customers whenever those capabilities can be obtained from SWBT.

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 Public tility Commission Office of Customer Protection at (512) 936-7120 on or before May 7, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference project number 19552.

TRD-9902206
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 12, 1999, pursuant to Public Utility Commission Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of AT&T Communications of the Southwest, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103. Project Number 19710.

The Application: AT&T Communications of the Southwest, Inc.'s (AT&T) intraLATA plan provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation. AT&T provides residential local exchange service to end users in the territory of Southwestern Bell Telephone Company (SWBT) through resale of local services. The commission has recently ordered SWBT to implement intraLATA equal access by May 7, 1999. AT&T states that it will provide intraLATA equal access to its customers at the time procedures to permit that capability are implemented by SWBT.

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 Public tility Commission Office of Customer Protection at (512) 936-7120 on or before May 7, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference project number 19710.

TRD-9902207
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 12, 1999, pursuant to Public Utility Commission Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Title and Number: Application of Frontier Telemanagement, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103. Project Numbers 20127 and 20726.

The Application: Frontier Telemanagement, Inc.'s (Frontier) intraLATA plan provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation. Frontier provides local exchange service to end users in the territory of Southwestern Bell Telephone Company (SWBT) solely as a reseller under a Service Provider Certificate of Operating Authority (SPCOA). The commission has recently ordered SWBT to implement intraLATA equal access by May 7, 1999. Frontier states that it will provide intraLATA equal access to its customers subject to SWBT providing those capabilities to its resale customers.

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 on or before May 7, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. Please reference project numbers 20127 and 20726.

TRD-9902208
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 13, 1999, 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 Advanced TelCom Group, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20734 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange and long distance telecommunications services; however, the services offered to residential customers are bundled services, including higher speed Internet access services, not single wire-line basic services and may not include all services offered to business customers. The services the Applicant will provide include high speed digital services such as ADSL, as well as intraLATA and interLATA long distance services, advanced features, switched access services, premium services, and private line services.

Applicant's requested SPCOA geographic area includes the entire 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 May 5, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902210
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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Notices of Applications Pursuant to Public Utility Commission Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 1, 1999, pursuant to Public Utility Commission Substantive Rule §23.94 for approval to offer new services.

Tariff Title and Number: Application of XIT Rural Telephone Cooperative, Inc. for Approval to Offer New Services Pursuant to Public Utility Commission Substantive Rule §23.94. Tariff Control Number 20692.

The Application: XIT Rural Telephone Cooperative, Inc. (XIT or the company) seeks approval for the following optional new service offerings: Call Waiting ID, Directory Assistance, and Directory Assistance Call Completion. The company estimates the proposed new services will decrease the intrastate gross annual revenues by $496. XIT proposes an effective date of July 1, 1999, for all exchanges served by the company.

Subscribers of XIT have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 70 affected local service customers, and must be received by the commission no later than June 1, 1999.

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 Public tility Commission Office of Customer Protection at (512) 936-7120 on or before June 1, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 20692.

TRD-9902196
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 14, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 12, 1999, pursuant to Public Utility Commission Substantive Rule §23.94 for approval to offer new services.

Tariff Title and Number: Application of Brazoria Telephone Company for Approval to Offer New Services Pursuant to Public Utility Commission Substantive Rule §23.94. Tariff Control Number 20732.

The Application: Brazoria Telephone Company (Brazoria or the company) seeks approval for the following optional new service offerings: Call Waiting with Cancel, Call Forwarding- Busy Line/ Don't Answer, Call Forwarding with Remote Access, Call Hold, Music on Hold, Distinctive Ringing, and Toll Denial with PIN Code Override. In addition, with the exception of Toll Denial with PIN Code Override, Brazoria is proposing to waive the nonrecurring installation charges associated with a request for the new optional features during the first 90 days after the new services are offered. The company estimates the proposed new services will increase its intrastate gross annual revenues by $98,366. Brazoria proposes an effective date of July 12, 1999, for all exchanges served by the company.

Subscribers of Brazoria have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 312 affected local service customers, and must be received by the commission no later than May 31, 1999.

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 Public tility Commission Office of Customer Protection at (512) 936-7120 on or before May 31, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 20732.

TRD-9902209
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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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 P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for LeTourneau, Inc. in Longview, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for LeTourneau, Inc. in Longview, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20744.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an addition to the existing PLEXAR-Custom service for LeTourneau, Inc. in Longview, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the 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-9902313
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 1999

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Public Notices of Amendments to Interconnection Agreement

On April 9, 1999, Southwestern Bell Telephone Company and Tech Telephone Company, Ltd., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas tilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20725. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 20725. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons

who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20725.

TRD-9902212
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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On April 9, 1999, Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20727. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 20727. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20727.

TRD-9902213
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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On April 9, 1999, Southwestern Bell Telephone Company, Teleport Communications Houston, Inc., and TCG Dallas (collectively, TCG), collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20728. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 20728. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have

the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20728.

TRD-9902214
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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On April 9, 1999, Southwestern Bell Telephone Company and NTS Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20729. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 20729. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO 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 20729.

TRD-9902335
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 20, 1999

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Public Notice of Interconnection Agreement

On April 7, 1999, Southwestern Bell Telephone Company and Valence Communications Services, Ltd. , collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20717. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20717. 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 noon, May 11, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20717.

TRD-9902211
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1999

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South East Texas Regional Planning Commission

Request for Proposal for 9-1-1 ANI/ALI Call Taker Equipment

The South East Texas Regional Planning Commission (SETRPC) is soliciting proposals for 9-1-1 Public Safety Answering Point ANI/ALI call taker equipment and controllers, installation, training and maintenance service for 12 agencies within the South East Texas region.

Request for Proposal packages may be obtained by contacting Bob Dickinson, 9-1-1 Program Director, South East Texas Regional Planning Commission, 3501 Turtle Creek Drive, Suite 103, Port Arthur, TX 77642, (409) 724-1911. Packages will not be faxed or emailed. A mandatory bidders conference will be held at 2:00 p.m. CST May 10, 1999 at the SETRPC offices.

The proposals received will be reviewed by the SETRPC 9-1-1 Sub Committee for contract award on the basis of:

(1) the Offeror's system proposed which will best satisfy the successful development and implementation of an Enhanced 9-1-1 emergency communications system

(2) firm's level of experience and financial stability

(3) price quoted for the system presented

(4) the firm's prior implementation performance, personnel experience, training programs offered and service record with similar projects.

All proposals must be received in the offices of SETRPC no later than 12:00 noon, CST, June 8, 1999. Proposals received after the specific date and time will not be considered. Contract award is scheduled for August 23, 1999.

TRD-9902340
Don Kelly
Executive Director
South East Texas Regional Planning Commission
Filed: April 20, 1999

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Texas Department of Transportation

Cancellation of Request for Proposals

The Texas Department of Transportation cancels the request for proposals that appeared in the March 19, 1999 issue of the *Texas Register* (24 TexReg 2099), concerning the use of telecommunication facilities from a telecommunication provider to provide a fiber-optic Intelligent Transportation System (ITS) deployment for transmitting voice, video, and computer data for monitoring and controlling of traffic flow.

TRD-9902324
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 1999

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Texas Workers' Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals and representatives of public health care facilities and other entities to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the new Standards and Procedures for the Medical Advisory Committee. Each member must be knowledgeable and qualified regarding work-related injuries and diseases.

The majority of these positions are filled, but the terms of the current members will expire in August of 1999. Current members may be reappointed or new members may be appointed.

Commissioners for the Texas Workers' Compensation appoint the Medical Advisory Committee members, which is composed of 16 primary and 16 alternate members representing health care providers, employees, employers and the public.

The purpose and tasks of the Medical Advisory Commission are outlined in the Texas Workers' Compensation Act, 413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies and guidelines.

The Medical Advisory Committee meets approximately once every six weeks. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings for the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee openings include:

Primary Members

Doctor of Medicine

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Dentist

Pharmacist

Occupational Therapist

General Public Representative, Rep. 1

Alternate Members

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Occupational Therapist

Dentist

Employee Representative

For an application, call Juanita Salinas at (512) 707-5888 or Ruth Richardson at (512) 440-3518.

TRD-9902368
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 21, 1999

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Texas Workforce Commission

Notice of Available Funds

Notice of Available Funds for Fiscal Year 2000 for New or Established Apprenticeship Training Programs Not Currently Receiving Funding from the Texas Workforce Commission under the Texas Education Code, Chapter 133.

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the Texas Education Code, Chapter 133.

Eligible Applicants. The Texas Workforce Commission is requesting preliminary contact-hour estimates from public school districts and state postsecondary institutions for related instruction (apprentice) classes for new or established apprenticeship training programs not currently receiving funding from the Texas Workforce Commission under Texas Education Code, Chapter 133.

Description. Funds will be available for Fiscal Year 2000 (September 1, 1999 - August 31, 2000) to fund programs or new occupations within a program not currently receiving funding under the Texas Education Code, Chapter 133. The purpose of the funds is to provide classroom instruction for related instruction (apprentice) classes of registered apprenticeship training programs. The amount of funding for Fiscal Year 2000 is unknown at this time and is contingent upon appropriation by the state legislature. The Texas Workforce Commission estimates that between $65,000 to $95,000 will be available for new apprenticeship programs.

Qualifications for Funding. To qualify for funding: 1) each apprenticeship training program or new occupation within a program must be certified and registered by the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, no later than August 1, 1999; 2) each apprentice must be registered with the BAT in Texas on or before September 1, 1999; 3) each apprentice must be a full-time paid employee in the private sector in Texas; 4) the number of related instruction hours per class must be certified by the BAT as verified in the program standards of the apprenticeship program; 5) a public school district or state postsecondary institution must act as fiscal agent for the funds pursuant to a contract between the apprenticeship program sponsor and the district or institution; 6) the related instruction (apprentice) class must start in September 1999 and conduct its fourth class meeting no later than October 2, 1999.

Dates of Program. Each class may not start before September 1, 1999, and must end on or before August 31, 2000.

Planning Allocation of Funds. The statewide total number of estimated contact hours that are submitted to the Texas Workforce Commission will be divided into the amount of funds available to determine a preliminary contact-hour rate, not to exceed $4.00 per contact hour. Planning allocations are made to eligible applicants based on the number of estimated contact hours submitted to the Texas Workforce Commission, multiplied by the preliminary contact-hour rate.

Use of Funds. Funds are used to supplement the cost of instructor salaries, instructional supplies, instructional equipment, other operating expenses, and administration. No more than 15 percent may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

Requesting the Forms to Submit Preliminary Estimated Contact Hours. A package of information explaining the process for submitting preliminary contact-hour estimates and the process for submitting an application may be obtained by contacting the Apprenticeship Program at (512) 463-9767 or writing to the Apprenticeship Program, Texas Workforce Commission, 101 East 15th Street, Room 144T, Austin, Texas 78778-0001.

Further Information. For additional information please contact Diane Lamb, Apprenticeship Coordinator, Texas Workforce Commission, at (512) 463-9767.

Deadline for Receipt of Preliminary Contact-Hour Estimates. The Texas Workforce Commission, Apprenticeship Program, must receive preliminary contact-hour estimates for Fiscal Year 2000 apprenticeship training programs no later than 5:00 p.m., Friday, May 28, 1999, to be considered for funding.

TRD-9902203
J. Randel Hill
General Counsel
Texas Workforce Commission
Filed: April 15, 1999

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Notice of Public Hearing

To All Persons Interested in the Proposed "Workforce Investment Act Rules" Under Consideration by the Texas Workforce Commission

The Texas Workforce Commission (Commission) will conduct a **PUBLIC HEARING**at:

10:00 a.m. on

May 13, 1999

101 East 15th Street

Room 244

Austin, Texas 78778.

to receive comments from the public on rules proposed by the Commission and published in the *Texas Register* on April 16, 1999 at 24 TexReg 3054. The proposed rules concern implementation of the Workforce Investment Act.

Any person may appear and offer comments or statements either verbally or in writing; however, questioning of commenters will be reserved exclusively to the Commission or its staff as may be necessary to ensure a complete record. While any person with relative comments or statements will be granted an opportunity to present them during the course of the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content. Persons wishing to appear and offer comments at the hearing are encouraged to notify the Commission in writing by May 10, 1999.

Copies of the proposed rules may be obtained from the April 16, 1999 issue of the *Texas Register* or an electronic copy is available on the Texas Workforce Commission website at: http://www.twc.state.tx.us/ . From this site, select the following links in this order: "About TWC," "TWC Rules and Governing Statutes," "Proposed Rules," and "Sections 841.1-841.96." You may also request a hard copy by calling Lela Dyson at (512) 936-3141 or by writing to her at Texas Workforce Commission, 101 E. 15th Street, Room 434T, Austin, Texas 78778-0001, or by e-mailing her at lela.dyson@twc.state.tx.us/ . All questions, comments and notice of intent to appear should be addressed to Ms. Dyson.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids, services to special accommodations are requested to contact Carolyn Calhoon at (512) 936-3501 at least two (2) working days prior to the hearing.

TRD-9902204

J. Randel Hill

General Counsel

Texas Workforce Commission

Filed: April 15, 1999

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