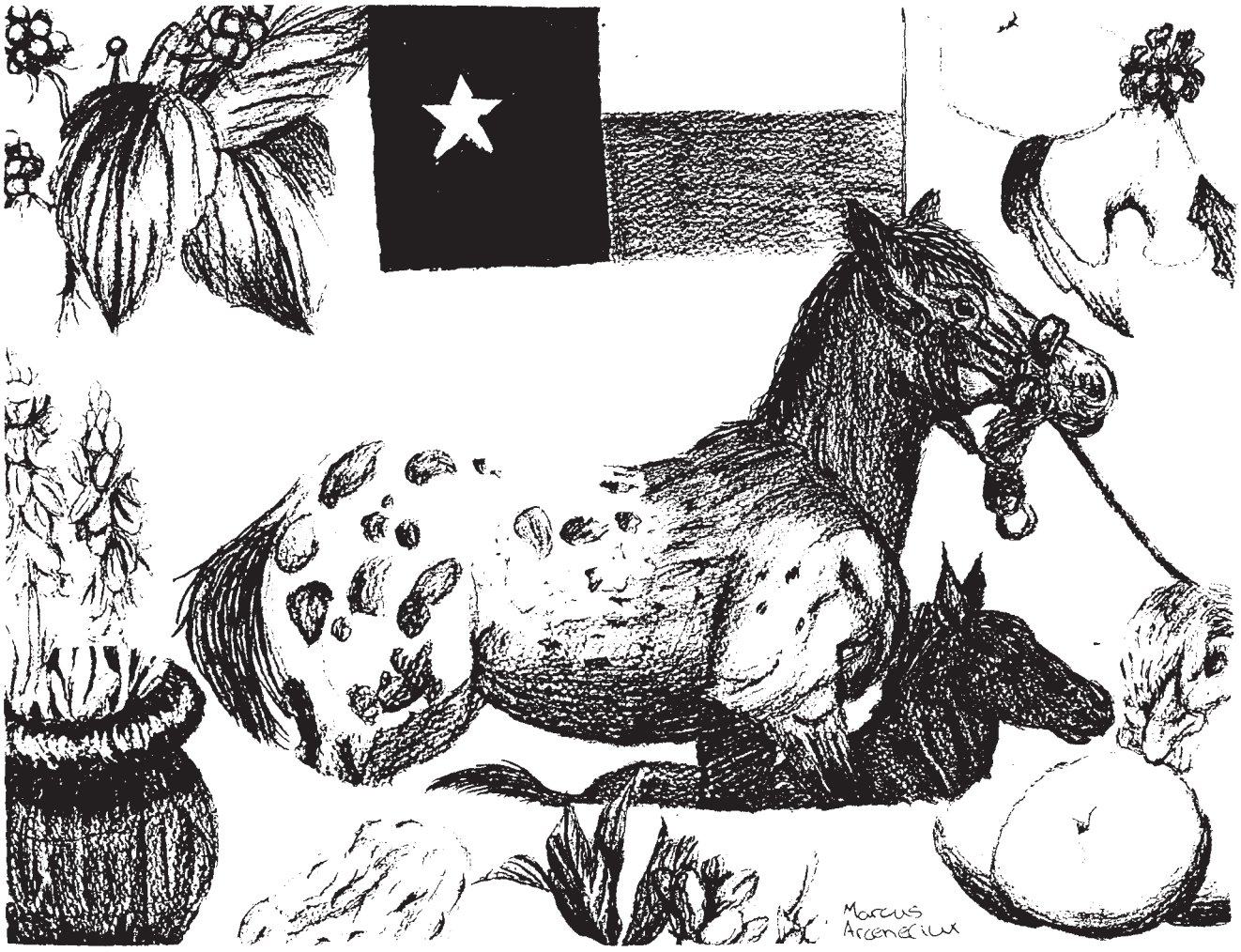
TEXAS REGISTER

Volume 24 Number 27 July 2, 1999 *Page 4931-5077*



This month's front cover artwork:

Artist: *Marcus Arceneaux*

7th Grade

Johnston Middle 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.

Texas Register, **ISSN 0362-4781,** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $150, six month $100. First Class mail subscriptions are available at a cost of $250 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

POSTMASTER: Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the
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ATTORNEY GENERAL

EMERGENCY RULES

PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

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.

Opinion

JC-0069. (RQ-0009) The Honorable David Dewhurst, Texas Land Commissioner, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, Re: Whether the General Land Office validly conveyed title to certain submerged land to the City of Aransas Pass in 1944, and related questions.

TRD-9903704

Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 22, 1999

♦ ♦ ♦

EMERGENCY RULES

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

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

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 81. Insurance

34 TAC §§81.1, 81.5, 81.7, 81.11

The Employees Retirement System of Texas (ERS) adopts on an emergency basis amendments to §§81.1, 81.5, 81.7, and 81.11, concerning the Uniform Group Insurance Program (UGIP). Section 81.1 is amended to remove long and short term disability insurance premiums from the definition of "insurance premium expenses" covered by the premium conversion plan; §81.5 is amended to permit certain retirees not covered by optional life insurance or dependent life insurance at the time of retirement an opportunity to apply for minimum retiree optional life insurance and dependent life insurance coverage. Section 81.5 is also amended to permit both parents to carry dependent life and accident insurance on a child if both parents are participants in the UGIP; and §81.7 is amended to make participation in the premium conversion plan mandatory and automatic, to make coverage of an adopted child effective on the date of placement for adoption, to make coverage in the life and accident plans begin at the date of birth and to clarify the definition of a qualifying life event for premium conversion purposes; and §81.11 is amended to reflect amendments made in §81.7.

These sections are being adopted on an emergency basis in order to have UGIP policies and procedures relating to eligibility, enrollment, and premium conversion in place before the beginning of annual summer enrollment that begins on July 1, 1999. Additionally, the ERS is in the process of implementing a new, comprehensive employee benefits software platform providing on-line access and interactive capabilities. The adoption of these sections on an emergency basis will permit the integration of the proposed changes with the implementation of the new employee benefits software in order to achieve a smooth transition in conjunction with summer enrollment and the start of the new plan year.

The amendments are adopted under Insurance Code, Article 3.50-2, §4.

No other statutes are affected by these proposed amendments.

§81.1. Definitions.

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

(1) Accelerated Life Benefit - An amount of Term Life Insurance requested by the insured employee and approved by the carrier to be paid in advance of the employee's or covered dependent's actual death in accordance with the terms of the Group Term Life Plan, as permitted by Article 3.50-6, Texas Insurance Code. Accelerated Life Benefit payment can be requested only upon diagnosis of a terminal condition and only once during the lifetime of the employee or covered dependent. A terminal condition is a non-correctable health condition that with reasonable medical certainty will result in the death of the insured within 12 months.

(2) Act - The Texas Employees Uniform Group Insurance Benefits Act, Chapter 79, Acts of the 64th Legislature, 1975, as amended (the Insurance Code, Article 3.50-2).

(3) Active duty - The expenditure of time and energy in the service of the State of Texas. An employee will be considered to be on active duty on each day of a regular paid vacation or regular paid sick leave or on a non-working day, if the employee was on active duty on the last preceding working day.

(4) AD&D - Accidental death and dismemberment.

(5) Age of employee - The age to be used for determining optional term life and voluntary AD&D insurance premiums will be the employee's attained age as of the employee's first day of active duty within a contract year.

(6) Annuitant - A person as defined in the Act.

(7) Basic plan - The program of group insurance determined by the trustee in which every full-time employee or retiree is automatically enrolled, unless participation is specifically waived.

(8) Board or trustee - The board of trustees of the Employees Retirement System of Texas.

(9) Committee or GBAC - The Group Benefits Advisory Committee as established by the Act, §18.

(10) Contract year - A contract year begins on the first day of September and ends on the last day of the following August.

(11) Department - Commission, board, agency, division, institution of higher education, or department of the State of Texas created as such by the constitution or statutes of this state.

(12) Dependent - The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A) the natural child of an employee/retiree;

(B) a legally adopted child (including a child living with the adopting parents during the period of probation);

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) any such child, regardless of age, who lives with or whose care is provided by an employee or retiree on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine. Mentally retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self-sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25. As a condition to the continued coverage of a child as a mentally retarded or physically incapacitated dependent beyond the age of 25, the carrier or health maintenance organization shall have the right to require periodic certification of the child's physical or mental condition, but not more frequently than annually following the child's attainment of age 25.

(13) Eligible to receive an annuity - Refers to a person who, in accordance with the Act, meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(14) Employee - Any appointive or elective state officer or employee in the service of the State of Texas, including an employee of an institution of higher education as defined in the Act, except a person [~~persons~~] performing personal services for the State of Texas or an institution [~~institutions~~] of higher education as an independent contractor [~~contractors~~]:

(A) who is retired or retires and is an annuitant as defined in the Act;

(B) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state;

(C) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the state Comptroller of Public Accounts [~~upon the state treasurer~~] against appropriations made by the Texas legislature from any state funds or against any trust funds held by the state [~~treasurer~~] or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act;

(D) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by the Act;

(E) who is a member of the governing body of an institution of higher education;

(F) who is a member of the State Board of Education;

(G) who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or,

(H) who receives compensation for services rendered to an institution of higher education but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that, as a condition of employment, requires the person to be enrolled as a student in the institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a week.

(15) Employing office - For a retiree covered by this program, the office of the Employees Retirement System of Texas in Austin, Texas or the retiree's last employing department [~~agency~~]; for an active employee, the employee's employing department [~~agency~~].

(16) Evidence of insurability - Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) of this title (relating to Enrollment and Participation).

(17) Extended sick leave without pay - The status of an employee who is certified monthly by an agency administrator to be absent from duty as a result of a disabling condition which prevents the employee from performing the employee's usual duties, and who has not received a refund of retirement contributions based upon the most recent term of employment. Such leave is limited to a maximum period of duration in the current Appropriations Act.

(18) Former COBRA unmarried child - a child of an employee or retiree who is unmarried; whose UGIP coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272, (COBRA) reinstates UGIP coverage.

(19) HealthSelect of Texas - The statewide point-of-service plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.

(20) HealthSelect Plus - The optional managed care plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO on a regular basis.

(21) HMO - A health maintenance organization approved by the board to provide health care benefits to eligible participants in the program in lieu of participation in the program's HealthSelect of Texas plan or HealthSelect Plus plan.

(22) Insurance premium expenses - Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the Program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the premium conversion plan include out-of-pocket premium for group term life, health (including HMO premiums), AD&D, [accidental death and dismemberment,] and dental, [and long and short term disability,] but do [does] not include out-of-pocket premium for long or short term disability or dependent term life.

(23) Leave without pay - The status of an employee who is certified by a department administrator to be absent from duty for an entire calendar month, who does not receive any compensation for that month, and who has not received [compensation or] a refund of retirement contributions based upon the most recent term of employment.

(24) ORP - The Optional Retirement Program as provided in the Government Code, Chapter 830.

(25) Placement for adoption - A person's assumption and retention of a legal obligation for total or partial support of a child in anticipation of the person's adoption of such child.

(26) Preexisting condition - Any injury or sickness, for which the employee received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(h) of this title must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(27) Premium conversion plan - A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

(28) Program - The Texas Employees Uniform Group Insurance Program as established by the board.

(29) Retiree - A retired employee who is eligible, under the terms of the Act, for benefits under this program and retired employees who, as of August 31, 1992, were eligible participants in a group insurance program administered by an institution of higher education.

(30) Salary - The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials or members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

(31) System - The Employees Retirement System of Texas.

(32) TRS - The Teacher Retirement System of Texas.

§81.5. Eligibility.

(a) Full-time employees. A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for automatic coverage [and premium conversion] on the first day he or she begins active duty with the state. For an elected or appointed officer, the first day of active duty shall be the day he or she takes the oath of office.

(b) Part-time employees. A part-time employee or other employee who is not eligible for automatic coverage becomes eligible for coverage upon application to participate in the program, subject to the provisions of §81.7(b) of this title (relating to Enrollment) [is subject to the same eligibility rules as a full-time employee].

(c) Retirees. [A retiree is eligible for health and dental coverage on the day he or she becomes an annuitant. A retiree is eligible for optional life insurance coverage only if the retiree was enrolled in optional life insurance coverage on the day before becoming an annuitant. A retiree is eligible for dependent life insurance coverage only if the retiree was enrolled in dependent life insurance coverage on the day before becoming an annuitant. Retirees may not increase the amount of life insurance for which they have been enrolled, but may cancel life coverage at any time. Canceled life insurance coverages may never be reinstated. A retiree is not eligible for disability or accidental death and dismemberment coverage.]

(1) A retiree is eligible for health and dental coverage on the day he or she becomes an annuitant.

(2) A retiree is eligible for optional life insurance and dependent life insurance coverage if the retiree was enrolled in such coverage on the day before becoming an annuitant. Except as provided in paragraph (3) of this subsection, a retiree may not increase the amount of life insurance for which the retiree was enrolled on the day before becoming an annuitant, but may cancel life insurance coverage at any time. Canceled life insurance coverages may never be reinstated. A retiree is not eligible for disability or AD&D coverage.

(3) A covered retiree whose effective date of retirement is on or after September 30, 1999, and who was not enrolled in optional life insurance or dependent life insurance coverage on the day before becoming an annuitant, becomes eligible for minimum retiree optional life insurance and dependent life insurance coverage on the date the retiree becomes an annuitant. Submission of evidence of insurability acceptable to the system shall be required for enrollment in such coverage.

(4) A covered retiree who was not enrolled in dependent life insurance coverage on the day before becoming an annuitant becomes eligible for dependent life insurance coverage of a newly acquired dependent on the first day of the month following the date on which the individual becomes a dependent of the retiree.

(5)[(1)] Unless otherwise specifically authorized, persons who become insured as retirees will be ineligible for coverage as active employees as long as they remain eligible for coverage as retirees.

(6) [(2)] A retiree whose extended life insurance benefits are terminated is eligible for retiree life insurance coverage on the first day of the month following the extended life insurance benefits termination date.

(d) Dependents of employees and retirees. [The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order. A newborn child is

~~covered automatically on the date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active employees or covered as dependents of an active employee, the retiree may add dependent life coverage upon an eligible dependent's termination of employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. A dependent may not be covered by more than one employee or retiree for the same coverage. Double coverage is not permitted for any participant in the program.~~]

(1) The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. Except as otherwise provided in this paragraph, a newly acquired dependent is eligible for coverage on the first day of the month following the date on which the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order. A newborn natural child is eligible automatically on the date of birth. A newly adopted child is eligible automatically on the date of placement for adoption.

(2) Except as otherwise provided in this paragraph, double coverage is not permitted for any participant in the program.

(A) A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. Except as provided in subparagraph (B) of this paragraph, a dependent may not be covered by more than one employee or retiree for the same coverage.

(B) A child who is an eligible dependent of two participants in the program may be enrolled in dependent life insurance coverage and accidental death and dismemberment coverage by both participants.

(e) Former COBRA unmarried children. [~~A former COBRA unmarried child is eligible for the health and dental coverages in which they were enrolled upon expiration of the child's continuation coverage under the Consolidated Omnibus Reconciliation Act (COBRA), Public Law 99-272.~~]

(1) A former COBRA unmarried child is eligible to continue the health and dental insurance coverages in which the child was enrolled upon expiration of the child's continuation coverage under COBRA.

(2) A former COBRA unmarried child continuing health insurance coverage under the provisions of this subsection is eligible for dental insurance coverage if such coverage was not in effect upon the expiration of the child's continuation coverage under COBRA.

(f) Surviving dependents.

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

(4) A surviving spouse or [~~of~~] a dependent child of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a violent death in the course of performance of duty is eligible to continue or enroll in health and dental coverages. A surviving spouse or natural or adopted children eligible under this section may enroll within 90 days from the date of death. Other eligible dependent children may continue health and dental coverages in effect on the date of death.

(5) A surviving spouse and eligible dependents, and a surviving dependent child, continuing health insurance coverage under the provisions of this subsection are eligible for dental insurance coverage if such coverage was not in effect on the date of death of the deceased employee or retiree.

(g)-(k) (No change.)

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee who is eligible under the Act for automatic insurance coverage shall be enrolled in the basic plan of health and life insurance unless, on or before the date on which the employee begins active duty, the employee completes and signs an enrollment form to elect other coverages or to decline any and all coverages. Coverage of an employee under the basic plan, and other coverages selected as provided in this paragraph, become effective on the date on which the employee begins active duty. [~~A new employee, other than a part-time state agency employee, will automatically be enrolled in the basic plan of health and life insurance, effective on his or her first day of active duty. Any employee, who is eligible and enrolled in the program, is eligible to participate in premium conversion and shall be enrolled automatically in the premium conversion plan. To enroll eligible dependents, elect to enroll in an approved HMO or in HealthSelect Plus, elect optional coverages, and/or elect not to participate in premium conversion, the employee must complete an enrollment form on the first day of active duty or within 30 days from that date. The employee may decline any and all coverages in the program or participation in premium conversion by completing an enrollment form on or before the first day of active duty.~~]

(2) To enroll eligible dependents, to elect to enroll in an approved HMO or in HealthSelect Plus, and to elect optional coverages, the employee shall complete and sign an enrollment form within 30 days after the date on which the employee begins active duty. Coverages selected on or before the date on which the employee begins active duty become effective on the date on which the employee begins active duty. Coverages selected within 30 days after the date on which the employee begins active duty become effective on the first day of the month following the signature date on the enrollment form. An enrollment form completed and signed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section. [~~An enrollment form for coverages or premium conversion election to be effective on the day the employee begins active duty must be completed and signed on or before that day. Coverages or premium conversion elections for which the enrollment form is completed and signed after the first day of active duty and within 30 days after that day will be effective on the first day of the month following the signature date on the enrollment form. Enrollment forms completed and signed after the first 31 days will be governed by subsection (h) of this section.~~]

(3) Except as otherwise provided in this section, an employee may not change coverage during a contract year. [~~An employee's election to or not to participate in the premium conversion plan shall be irrevocable for the plan year, unless there is a change~~

in family status as defined in subsection (h)(1) of this section and the change is consistent with the event.

(4) An eligible employee who enrolls in the program is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty. [An employee who continues to remain eligible to participate in premium conversion shall be enrolled automatically for subsequent plan years unless the employee specifically declines participation in writing during the annual enrollment period or under the family status rules.]

[(5) An employee who is ineligible to participate, or who is eligible and elects not to participate, in premium conversion and who becomes or remains eligible to participate in a subsequent plan year will continue to not participate in premium conversion unless the employee completes a new enrollment form during the annual enrollment period or under the change in family status rules and elects to participate.]

(5)[(6)] [Coverages for dependents of an employee will be effective on the same day the employee's coverage becomes effective if an enrollment form is completed and signed on or before the effective date of the employee's coverage. If the enrollment form is completed and signed within 30 days after the employee's effective date, the dependent's coverage will be effective on the first day of the month following the signature date on the enrollment form.] Coverage for a newly eligible dependent, other than a dependent referred to in paragraphs (6) or (8) [(7) and (9)] of this subsection, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed and signed on or within 30 days after the date the person [dependent] first becomes a dependent [eligible]. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, [more than 30 days after the employee's effective date or the date the dependent is first eligible, as the case may be,] the enrollment form will be governed by the rules in subsection (h) of this section. [The requirement that an enrollment form must be completed and signed within 30 days after a dependent first becomes eligible is waived if the level of health, dental, and/or life coverages were in effect prior to the acquisition of the newly eligible dependent; however, an enrollment form must be completed before verification of coverage will be provided to the carrier(s)].

(6)[(7)] A newborn natural child will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree. A newly adopted child will be covered immediately and automatically from the date of placement for adoption in the health plan in effect for the employee or retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for health coverage must be submitted within 30 days after the date of birth or placement for adoption.

[(A) If there are no other dependents covered at the time of birth, the newborn natural child will be automatically covered in the same health plan in which the employee or retiree is then covered. Unless not in compliance with subsection (h) of this section, to continue coverage for more than 30 days after the date of birth, an enrollment form for health coverage must be submitted within 30 days after the date of birth.]

[(B) If health, dental, and/or life coverages for dependent children were already in effect, an application to add a subsequent newborn natural child must be completed before verification of coverage for the newborn dependent will be provided to the carrier.]

(7)[(8)] The effective date of a newborn natural child's life and AD&D insurance will be the date of birth, if the child is born alive, as certified by an attending physician. The effective date of a newly adopted child's life and AD&D insurance will be the date of placement for adoption [14th day after the date of birth, unless the newborn natural child is then confined to a hospital or other institution for medical care; in which case, the newborn natural child's life and AD&D insurance coverage will become effective on the day after the day the newborn natural child is released from the hospital or institution]. The effective date of all other eligible dependents' life and AD&D insurance coverages will be [become effective] as stated in paragraph (5) [(6)] of this subsection [, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, the life and AD&D insurance coverage will become effective on the day after the day the dependent is released from the hospital or institution].

(8)[(9)] Health insurance coverage of an [An] eligible child for whom a covered employee or retiree is court-ordered [court ordered] to provide medical support becomes effective on the date on which the department receives a valid copy of the court order [eligible for health coverage upon receipt by the department of a valid court order].

(9)[(10)] The effective date of HealthSelect of Texas coverage for an employee's or retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in paragraph (5) [(6)] of this subsection [, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, HealthSelect of Texas coverage will be effective on the day after the day the dependent is released from the hospital or institution].

(b) Part-time employees. A part-time employee or other employee who is not automatically covered [but] must complete an application form provided by the Employees Retirement System of Texas, authorizing necessary deductions for premium payments for elected coverage [and electing to participate or not to participate in premium conversion]. This form must be submitted to the Employees Retirement System of Texas through his or her employing department [agency] on, or within 30 days after, the date on which the employee begins active duty [or before the employee's first day of active duty in order for coverage to be effective on that day. If not submitted on the first day of active duty, but within 30 days thereafter, coverage will be effective on the first day of the month following the date of application]. All other rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to such [a part-time] employee.

(c) Retirees and their dependents.

(1) Provided the required premiums are paid or deducted, an employee's health, dental and term life insurance coverage (including eligible dependent coverages) may be continued upon retirement [provided the employee was insured in the program for such benefits immediately preceding the first day he or she becomes an annuitant]. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance contract as a retiree. All other coverages in force for the active employee, but not available to the retiree, will automatically be discontinued concurrently with the commencement of retirement status.

(2) A retiree may enroll in health, dental, and life insurance coverages for which the retiree is eligible, including dependent coverages, by completing and signing an enrollment form before, on, or within 30 days after, the retiree's effective date of retirement. Ex-

cept as otherwise provided in this paragraph and paragraph (4) of this subsection, coverage becomes effective on the first day of the month following the effective date of retirement. A change in coverage for which the retiree applies after initial enrollment as a retiree, but within 30 days after the effective date of retirement, becomes effective on the first day of the month following the date of the application. An application received after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section. [If a retiree was not covered as an active employee immediately prior to becoming an annuitant, the retiree will be automatically enrolled in the basic retiree plan. Coverage for an eligible dependent of a retiree will be effective on the same day the retiree's coverage becomes effective if an application is received on or before the retiree's effective date of coverage. Applications received after the first 31 days will be governed by subsection (h) of this section.]

(3) A retiree who becomes eligible for optional life insurance coverage or dependent life insurance coverage as provided in §81.5(c)(3) of this title (relating to Eligibility) may apply for approval of such coverage before, on, or within 30 days after, the effective date of retirement by providing evidence of insurability acceptable to the system.

(4)[(3)] Enrollments and applications to change coverage become effective as provided in paragraph (2) of this subsection [An application to delete optional life coverages or to change health coverage will be effective on the day the member becomes an annuitant if the application is postmarked or received by the Employees Retirement System on or before the effective date of retirement,] unless other coverages are in effect at that time. If other coverages are in effect at that time, [the deletion or change in] coverage becomes [will become] effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. [If the application is received after the date the member becomes an annuitant, but within 30 days after the date the member becomes an annuitant, the deletion or change of coverage will become effective the first day of the month following the date the application for deletion or change is received, unless other coverages are in effect at that time. If other coverages are in effect at that time, the deletion or change in coverage will become effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled. All other enrollment rules stated in subsections (a), (g), and (l) of this section apply to retirees.]

(5) All other enrollment rules stated in subsections (a), (g), and (l) of this section apply to retirees.

(d) Surviving dependents. [A surviving spouse and dependents of a deceased employee who, at the time of death, had at least ten years of service credit, including three years of service as an eligible employee with a Uniform Group Insurance Program participating department, and who met the program eligibility requirements in accordance with the Act may continue coverage as provided in §81.5(f) of this title (relating to Eligibility). A surviving spouse and dependents of a deceased retiree may continue coverage as provided in §81.5(f) of this title. A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(d)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(d)(2)(B) of this title. The surviving spouse or eligible dependents must apply to continue coverage for himself or herself and dependents within 30 days after notification in writing of eligibility to make application.]

(1) A surviving dependent eligible to continue health and dental insurance coverage as provided in §81.5(f) of this title (relating to Eligibility) may apply to continue such coverage upon written notification of eligibility to apply. Application shall be made on, or within 30 days after, written notification of eligibility to apply. Coverage becomes effective on the first day of the month following the date of death of the deceased employee or retiree.

(2) A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(d)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(d)(2)(B) of this title.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue health and dental insurance [for] coverage on, or within 30 days after, [within 30 days from] the date the notice of eligibility was mailed by the system. Coverage becomes effective on the first day [will begin the first] of the month following the month in which continuation coverage ends. Premium payments may be made as provided in §81.3(d)(2)(B) (relating to Administration).

(f) Premium conversion plans.

(1) An eligible employee participating in the program is deemed to have elected to participate in the premium conversion plan and to pay insurance premium expenses with pre-tax dollars as long as the employee remains on active duty. [Pursuant to the premium conversion plan, a participant may elect to pay certain insurance premium expenses for health, disability, accidental death and dismemberment, dental, and group term life with pre-tax dollars.] The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) (No change.)

(g) Special rules for additional or alternative coverages.

(1) (No change.)

(2) An eligible participant in the program [Program] and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract [letter of agreement] with the HMO.

(3) An eligible participant in the program [Program] and eligible dependents may participate in HealthSelect Plus if they reside in an [the] approved service area of HealthSelect Plus.

(4)-(6) (No change.)

[(7) An employee who, during the annual enrollment period prior to the beginning of a plan year or within 30 days from their first active duty date, makes an application to increase insurance coverage under the Program (the premium for which will exceed the State of Texas' and the institution's total contributions for premium costs) may elect not to participate in premium conversion by completing and submitting an enrollment form during the annual enrollment period or within 30 days from the first active duty date.]

(h) Changes in coverage after the initial period for enrollment [beyond the first 31 days of eligibility].

(1) Changes for Qualifying Life Event. [The premium conversion plan's affect on ability to change insurance coverage.

An employee participating in the premium conversion plan may not change coverages during the plan year, unless there is a change in family status and the change is consistent with the event. A change in family status includes marriage, divorce, death of a dependent; birth or adoption; termination or gaining employment by a dependent; change from full-time to part-time or part-time to full-time employment status by employee or dependent; significant change in health insurance coverage attributable to dependent gaining employment; employee's dependent regains Program eligibility; employee acquires a Program eligible dependent; employee is court ordered to provide medical support for dependent child; dependent goes on or returns from leave without pay; dependent involuntarily loses health coverage or dependent child loses dependent eligibility for other health coverage; dependent gains or loses Medicaid eligibility; Program covered dependent loses Program eligibility; Program covered dependent becomes eligible for Program as a retiree; or, a dependent gains or loses eligibility for Medicare.]

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a participant shall be allowed to change coverage during a plan year if a qualifying life event occurs as provided in this paragraph and the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

(i) change in marital status;

(ii) change in dependent status;

(iii) change in employment status;

(iv) change of address that results in loss of benefits eligibility;

(v) change in Medicare or Medicaid status;

(vi) significant cost of benefit or coverage change imposed by a third party provider; or

(vii) change in coverage ordered by a court.

(C) A participant who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6)-(9) of this subsection.

(D) A participant may apply to change coverage on, or within 30 days after, the date of the qualifying life event.

(E) Except as otherwise provided in subsections (a)(6) and (a)(8) of this section, the change in coverage is effective on the first day of the month following the date of the qualifying life event.

(F) The plan administrator may require documentation in support of the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible participant who wishes to add or increase coverage, add eligible dependents to HealthSelect of Texas, or change coverage from an HMO [or HealthSelect Plus] to HealthSelect of Texas after the initial period for enrollment [more than 30 days after the initial date of eligibility] must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV Optional Term Life insurance;

(B) employees who wish to enroll in or increase Optional Term Life insurance, Short Term Disability, or Long Term Disability after the initial period for enrollment [more than 30 days after the initial date of eligibility];

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas after the initial period for enrollment [more than 30 days after the initial date of eligibility], except as provided in subsections (a), (g)(5)-(6), and (h)(6)-(10) [(7)-(11)] of this section; [or]

(D) employees enrolled in the program whose coverage was dropped or canceled, except as otherwise provided in subsection (k) [subsection (k)(3), (4), and (6)] of this section; and

(E) retirees who wish to enroll in optional life insurance coverage or dependent life insurance coverage as provided in subsection (c)(3) of this section.

(5) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO or HealthSelect Plus coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection [when a dependent terminates employment, when a dependent loses health coverage for reasons other than voluntary cancellation, when a dependent changes employment status, when an employee or retiree divorces, or when a spouse dies, and as provided in paragraph (13) of this subsection, unless not in compliance with paragraph (1) of this subsection. The effective date of coverage will be the first day of the month following the event date if an enrollment form is completed and signed on or within 30 days following the date the dependent becomes eligible under this rule].

(6) A participant who is enrolled in an approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the participant moves out of the HMO service area: [An employee, who is otherwise eligible to participate in the Program but who did not decline participation in premium conversion prior to the beginning of a plan year or who elected to participate and who has a change in family status as defined in paragraph (1) of this subsection after the beginning of the plan year, may elect not to participate in premium conversion, if the change

is consistent with the change in family status, by completing and submitting an enrollment form within 30 days from the date the family status change occurs.]

(A) enroll in another approved HMO for which the participant and all covered dependents are eligible;

(B) enroll in HealthSelect Plus, if the participant and all covered dependents are eligible; or

(C) if the participant and all covered dependents are not eligible to enroll in either an approved HMO or HealthSelect Plus, either:

(i) enroll in HealthSelect of Texas without providing evidence of insurability; or

(ii) enroll in an approved HMO or in HealthSelect Plus, if the participant is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(a)(2) of this title (relating to Termination of Coverage).

(7) A participant who is enrolled in HealthSelect Plus and who permanently moves out of the HealthSelect Plus service area, shall make one of the following elections, to become effective on the first day of the month following the date on which the participant moves out of the HealthSelect Plus service area: [An eligible participant, who is enrolled in an approved HMO and permanently moves his or her place of residence out of that HMO's service area to a location where the participant is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in HealthSelect of Texas or HealthSelect Plus, if the participant is eligible. Coverage in the HMO will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and the coverages in HealthSelect of Texas or HealthSelect Plus will become effective on the day following the day HMO coverage is canceled. The evidence of insurability provision shall not apply in these cases.]

(A) enroll in an approved HMO for which the participant and all covered dependents are eligible; or

(B) if the participant and all covered dependents are not eligible to enroll in an approved HMO, either:

(i) enroll in HealthSelect of Texas without providing evidence of insurability; or

(ii) enroll in an approved HMO for which the participant is eligible and drop any ineligible covered dependent, unless not in compliance with §81.11(a)(2) of this title (relating to Termination of Coverage).

(8) When a covered dependent of a participant permanently moves out of the participant's HMO service area, the participant shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area: [An eligible participant, who is enrolled in HealthSelect Plus and permanently moves his or her place of residence out of the HealthSelect Plus service area will be enrolled in HealthSelect of Texas, whether or not an HMO is available. Coverage in HealthSelect Plus will be canceled on the last day of the month in which the previously described employee, retiree, or other participant moved from the service area, and coverage in HealthSelect of Texas will become effective on the day following the day HealthSelect Plus coverage is canceled. The evidence of insurability provision shall not apply.]

(A) drop the ineligible dependent, unless not in compliance with §81.11(a)(2)(relating to Termination of Coverage);

(B) enroll in an approved HMO or HealthSelect Plus, if the participant and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas without providing evidence of insurability if the participant and all covered dependents are not eligible to enroll in an approved HMO or HealthSelect Plus.

(9) When a covered dependent of a participant permanently moves out of the HealthSelect Plus service area, the participant shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HealthSelect Plus service area: [When a covered dependent of an eligible participant permanently moves out of the participant's HMO service area, the participant must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the participant's HMO service area:]

(A) drop the ineligible dependent, unless not in compliance with §81.11(a)(2)(relating to Termination of Coverage);

(B) enroll in an approved HMO if the participant and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas without providing evidence of insurability, if the participant and all covered dependents are not eligible to enroll in an approved HMO.

[(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, or §81.11(a)(2) (relating to Termination of Coverage); or]

[(B) enroll in HealthSelect of Texas or HealthSelect Plus, if the participant and all covered dependents are eligible. The evidence of insurability provision shall not apply.]

[(10) When a covered dependent of an eligible participant permanently moves out of the HealthSelect Plus service area, the participant must make one of the following elections to become effective on the first day of the month following the date the dependent moved out of the HealthSelect Plus service area:]

[(A) drop the ineligible dependent, unless not in compliance with paragraph (1) of this subsection, and §81.11(a)(2) (relating to Termination of Coverage; or]

[(B) change coverage to HealthSelect of Texas. The evidence of insurability provision shall not apply.]

(10)[(11)] An eligible participant will be allowed an annual opportunity to make changes in [to their] coverages [and premium conversion election, if applicable].

(A) A participant [Persons] will be allowed to:

(i) change from one HMO to another HMO;

(ii) change from an HMO to HealthSelect Plus;

(iii) change from HealthSelect Plus to an HMO

(iv) change from HealthSelect of Texas to HealthSelect Plus;

(v) change from HealthSelect of Texas to an HMO;

(vi) change from HealthSelect Plus to HealthSelect of Texas;

(vii) select in-area or out-of-area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;

(viii) enroll in a dental plan;

(ix) change dental plans;

(x) enroll eligible dependents in an HMO, HealthSelect Plus, or dental coverage;

(xi) enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled in HealthSelect of Texas and does not reside in any HMO service area;

(xii) enroll themselves and their eligible dependents in an eligible HMO, in HealthSelect Plus (if they are eligible), and in a dental plan from a declined or canceled status;and [~~or~~]

(xiii) decrease or cancel coverage, unless prohibited by §81.11(a)(2) (relating to Termination of Coverage) [~~enroll or cancel enrollment in the premium conversion plan~~].

(B) Surviving dependents and former COBRA unmarried children are not eligible for the provisions in subparagraph (A)(vii), [~~(viii),~~] (x), or (xi) of this paragraph, except that a surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1. [~~The evidence of insurability provision shall not apply to persons changing from HealthSelect Plus to HealthSelect of Texas.~~]

[~~(D) Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to change their enrollment in the premium conversion plan and apply through evidence of insurability for coverage within the first 30 days after return to active duty.~~]

(11)[~~(12)~~] A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(d) (relating to Eligibility). [~~Unless not in compliance with paragraph (1) of this subsection and §81.11(a)(2) (relating to Termination of Coverage), an eligible participant who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the signature date of the enrollment form.~~]

[~~(13) An eligible dependent spouse or child who has health coverage as an employee under the program becomes eligible for coverage as a dependent on the day following termination of employment. Eligible dependent children who have health coverage in the program as dependents of an employee who terminates employment also become eligible for coverage on the day following termination of employment. In order to be eligible for coverage, dependents must meet the definition of dependent contained in §81.11 of this title (relating to Definitions) and be enrolled for coverage by the employee of whom they are the eligible dependent and who is enrolled for health coverage under the program. The effective date of coverage will be the first day of the month following termination of employment if an enrollment form is completed and signed on or within 30 days following the date the dependent(s) become eligible under this rule.~~]

[~~(14) Notwithstanding the effective dates of coverages, as defined in paragraphs (3)-(12) of this subsection, an eligible participant in the program may complete an enrollment form or enrollment forms during the annual enrollment period to make coverage changes, as determined by the trustee, to be effective September 1.~~]

(i) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees who enroll in disability [~~Disability~~] coverage. The exclusion for benefit payments shall not apply after the first six consecutive months that the employee has been actively at work or after the employee's disability coverage has been continuously in force for 12 months for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to[~~:~~] a medical condition resulting from congenital or birth defects.

[~~(1) a medical condition resulting from congenital or birth defects; or~~]

[~~(2) an individual returning to state employment in accordance with the conditions described in subsection (k)(3) of this section.~~]

(j) (No change.)

(k) Reinstatement in the program.

(1) Except as provided in subsection (h)(1) of this section, an employee who terminates employment and returns to active duty within the same contract year shall reinstate the coverages in effect on the date employment was terminated. Except as provided in subsection (h)(1), coverage becomes effective on the date on which the employee returns to active duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. [~~Unless specifically prohibited by these sections, paragraph (2) of this subsection, or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an enrollment form for the coverages. The enrollment form must be submitted on the first day the employee returns to active duty, and, unless the employee completes the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the employee returns to active duty. Dependents acquired during the break in employment may be added on the enrollment form. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate enrollment form during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of signature on the enrollment form. If the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.~~]

(2) Except as provided in paragraphs (3) - (5) of this subsection and subsection (h)(1) of this section, an employee whose coverages were canceled during a period of leave without pay shall, upon return to active duty, be enrolled in the basic plan without evidence of insurability, provided the employee is eligible for the full state contribution. Except as provided in subsection (h)(1), coverage becomes effective on the date on which the employee returns to active duty. [~~A terminated employee who returns to state or institution of higher education employment, or an employee who returns to active~~

duty from an approved leave of absence without pay, or transfers from one state agency to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain for the remainder of the plan year the premium conversion election in existence on the employee's last active duty date, unless an eligible change in family status occurred in accordance with subsection (h) of this section.]

(3) Except as provided in subsection (h)(1) of this section, an [An] employee who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and who is in a military leave without pay status or who must terminate employment as the result of an assignment to active military duty shall [may], upon return to active employment, reinstate all canceled [program] coverages that were in effect immediately prior to the commencement of active military duty, as long as the return to active employment occurs within 90 days of the release from active military duty. An employee shall [may] also reinstate the coverage of the employee's dependent, who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and whose coverage is terminated as the result of an assignment to active military duty. Except as provided in subsection (h)(1) of this section, coverage becomes effective on the date of return to active employment. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement, except that the period of active military duty shall be applied toward satisfaction of the remaining period of preexisting conditions exclusions. [The enrollment form to reinstate such coverages must be completed and signed during the 30 days following the day the employee returns to active employment. In the case of dependents, the enrollment form to reinstate coverages must be completed and signed within 30 days following the release from active duty. Enrollment forms for coverages to be effective on the day the employee returns to active employment must be completed and signed on or before the first day of the return to active employment. Coverages for which the enrollment form is completed and signed after the first day of the return to active state employment and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.]

(4) Except as provided in subsection (h)(1) of this section, an employee [Employees] whose coverages were canceled during a period of leave without pay due to a certified work-related disability shall [may], upon return to active duty status, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status. Except as provided in subsection (h)(1) of this section, coverage becomes effective on the date on which the employee returns to active duty. [, except as provided in §81.11(c)(4) of this title (relating to Termination of Coverage), and provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty.] To reinstate canceled coverages, submission of evidence [Evidence] of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled, no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement. [Coverages applied for on the first day of return to active duty will be effective on that day unless the employee completes and signs the enrollment form indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty. Coverages applied for after the first day of return to active duty and within 30 days after that day will be effective on the first day of the month following the date of signature on the enrollment form. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.]

(5) Except as provided in subsection (h)(1) of this section, an employee whose coverages were canceled [Employees whose coverages were cancelled] during a period of leave without pay as a result of the Family and Medical Leave Act of 1993 shall [may], upon return to active duty, reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status. Except as provided in subsection (h)(1) of this section, coverage becomes effective on the date on which the employee returns to active duty. [, provided an enrollment form to reinstate such coverages is completed and signed within 30 days of the return to active duty. However, if the coverage of an employee returning to active duty within the same plan year is affected by paragraph (2) of this subsection, the employee must reinstate all coverages that were in effect on the day immediately prior to entering the leave without pay status, and the effective date of reinstated coverage must be the date the employee returns to active duty.] To reinstate canceled [cancelled] coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided all applicable preexisting conditions exclusions were satisfied at the time coverages were canceled [cancelled], no additional preexisting conditions exclusions will apply upon reinstatement of coverages. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement.

[(6) Employees whose coverages were canceled on or after January 31, 1995, during a period of leave without pay, except as provided in paragraphs (3)-(5) of this section, shall upon return to active duty be enrolled in the basic plan, provided the employee is eligible for the full state contribution. Reinstatement of canceled coverages must be in compliance with subsection (h) of this section.]

(l) Continuation coverage in special circumstances.

(1) (No change.)

(2) Continuation of health, dental, and life coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. The employee must pay premiums directly as defined in §81.3(d)(2)(B)(i) of this title (relating to Administration). Disability income coverage for an employee in a leave without pay status will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status.

Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the date on which [~~first day~~] the employee returns to active duty if the entire period of unpaid leave was certified by the department as approved leave without pay.

(B) (No change.)

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

§81.11. Termination of Coverage.

(a) Cancellation of coverage.

(1) [~~Except as prohibited by §81.7(h)(1) of this title (relating to Enrollment and Participation) and paragraph (2) of this subsection, an employee, retiree, or surviving spouse may cancel any coverage in effect.~~] Coverage will continue through the last day of the month in which coverage is canceled [~~cancelled~~]. Coverage canceled by a surviving spouse or dependent of a deceased retiree may never be reinstated.

(2)-(5) (No change.)

(b)-(d) (No change.)

Filed with the Office of the Secretary of State,on June 17, 1999.

TRD-9903639
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: June 17, 1999
Expiration date: September 15, 1999
For further information, please call: (512) 867–7125

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Chapter 85. Flexible Benefits

34 TAC §§85.1, 85.3, 85.5, 85.7, 85.13

The Employees Retirement System of Texas (ERS) adopts on an emergency basis amendments to §§85.1, 85.3, 85.5, 85.7, and 85.13, concerning the Flexible Benefits Program. Section 85.1 is amended to revise the definition of "leave of absence without pay"; §85.3 is amended to expand the class of employees eligible to participate in the Flexible Benefits Program, make changes to the effective date of elections, and expand the types of changes that a participant can make in the Health Care Reimbursement Account following a qualifying event; §85.5 is amended to increase the Health Care Reimbursement Account limit from $3,000 to $5,000; §85.7 is amended to add additional events upon which participants may make changes to their elections in the Flexible Benefits Program and to redefine a "change in family" status to be a "qualifying life event"; and §85.13 is amended to make changes to the administrative fees of the Flexible Benefits Program.

These sections are being adopted on an emergency basis in order to have Uniform Group Insurance Program policies and procedures relating to the Flexible Benefits Program in place before the beginning of annual summer enrollment that begins on July 1, 1999. Additionally, the ERS is in the process of implementing a new, comprehensive employee benefits software platform providing on-line access and interactive capabilities. The adoption of these sections on an emergency basis will permit the integration of the proposed changes with the implementation of the new employee benefits software in order to achieve a smooth transition in conjunction with summer enrollment and the start of the new plan year.

The amendments are adopted under Insurance Code, Art. 3.50-2, §4A and affects Insurance, Code Art. 3.50-2, §13B.

No other statutes are affected by this amendment.

§85.1. Introduction and Definitions.

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

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1)-(23) (No change.)

(24) Leave of absence without pay–The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, who does not receive any compensation for that month, and who has not received a refund of retirement contributions based upon the most recent term of employment.

(25)-(35) (No change.)

§85.3. Eligibility and Participation.

(a) Dependent care reimbursement plans.

(1) Eligibility. Any employee eligible to participate in the Uniform Group Insurance Program [~~, except seasonal and temporary employees and graduate students,~~] may elect to participate in the dependent care reimbursement account. [~~For plan year 1993 only, beginning September 1, 1992, those graduate students in institutions of higher education who have a dependent care account on August 31, 1992, are exempt from this rule.~~]

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an [~~a TexFlex~~] election form on, or within 30 days after, the date on which the employee begins active duty. The election becomes effective on the first day of the month following the date on which the employee makes the election. [~~within the first 30 days of employment. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.~~]

(B) An employee who is [~~was~~] otherwise eligible to participate in the Uniform Group Insurance Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, and [~~but~~] who, after the beginning of the plan year, has a qualifying life event [~~change in family status,~~] as defined in §85.7(c) [~~(1)(B)~~] of this title (relating to Enrollment), may elect to participate in the dependent care reimbursement account as provided in §85.7(c). [~~if the change is consistent with the change in family status, by completing and submitting a TexFlex election form within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.~~]

(C) A qualifying life event [~~change in family status,~~] as defined in §85.7(c) [~~(1)(B)~~] of this title (relating to Enrollment) will permit a change or revocation of participation during the plan year as provided in §85.7(c). [~~A TexFlex election form must be submitted within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that to be the effective date.~~]

(D) An eligible employee shall have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year. [~~Annual enrollment period.~~]

~~*(i)* Eligible active employees will have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period will be prior to the beginning of a new plan year.~~]

~~*(ii)* Employees on approved leave of absence or extended sick leave without pay on the first day of a new plan year will be provided an opportunity to enroll or to change benefit options within the first 30 days after return to active duty.~~]

(3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable for the plan year unless there is a qualifying life event [~~change in family status~~] as defined in §85.7(c) [~~(1)(B)~~] of this title (relating to Enrollment).

(B) An employee returning to active duty following termination of employment, or following a period of approved leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment). [~~A terminated employee returning to state or institution of higher education employment or an employee returning to active duty from an approved leave of absence without pay, or transferring from one state agency or institution to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, may not change and shall retain for the remainder of the plan year, the election in existence on the participant's last active duty date.~~]

(b) Health care reimbursement plan.

(1) Eligibility.

(A) Any employee eligible to participate in the Uniform Group Insurance Program [~~, except seasonal and temporary employees and graduate students, who has completed six continuous months of full-time State of Texas or an institution of higher education, as defined in these rules, employment and who is classified as a full-time regular employee on September 1 of a new plan year or after the start of a plan year,~~] may elect to participate in a health care reimbursement account. [~~For plan year 1993 only, beginning September 1, 1992, those employees and graduate students in institutions of higher education who have a health care account on August 31, 1992, are exempt from this rule.~~]

(B) An employee whose employment has been terminated, voluntarily or involuntarily, and who had a health care reimbursement account at the time of termination, shall [~~must~~] retain the health care reimbursement account for the applicable period of election. [~~coverage. In addition, such a terminated employee may elect to enroll in a health care reimbursement account continuation coverage for the period as provided in the Public Health Service Act. A formal continuation coverage notification on a TexFlex election form provided by the Employees Retirement System of Texas must be completed and returned to the Employees Retirement System of Texas within 60 days from the date coverage is lost. Eligibility to participate is contingent upon pre-payment,~~] The terminated employee must pre-pay, on a monthly [~~or annual~~] basis, the elected amount [~~of the elected amount, plus a 2% service charge on the elected amount,~~] and any [~~the~~] administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment [~~and future eligibility~~].

~~[(C) An employee whose employment has been terminated, voluntarily or involuntarily except for those persons not eligible pursuant to subparagraph (A) of this paragraph, and who has health insurance continuation coverage under the Public Health Services Act on September 1, may elect to participate in a health care reimbursement account during annual enrollment. A formal election must be made on a TexFlex election form prior to the beginning of a new plan year. Eligibility to participate is contingent upon pre-payment, on a monthly or annual basis, of the elected amount, plus a 2% service charge on the elected amount, plus the administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment and future eligibility.~~]

(2) Participation.

(A) An employee who is eligible under paragraph (1) [~~(A) and (C)~~] of this subsection may elect to participate by completing and submitting an [~~a TexFlex~~] election form on, or within 30 days after, the date on which the employee begins active duty. The election becomes effective on the first day of the month following the date on which the employee makes the election [~~during the annual enrollment period or within 30 days after becoming eligible in the new plan year. The effective date of the election will be September 1 of the plan year or the first day of the month following the date of signature on the TexFlex election form, unless the employee makes an election on the first day of the month and designates that day to be the effective date~~].

(B) An employee who is [~~was~~] eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, and [~~but~~] who, after the beginning of a plan year, has a qualifying life event [~~an eligible change in family status,~~] as defined in §85.7(c) [~~(1)(A)~~] of this title (relating to Enrollment), may elect to participate in a health care reimbursement account as provided in §85.7(c). [~~if the change is consistent with the change in family status by completing and submitting an TexFlex election form within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that day to be the effective date.~~]

~~[(C) A new hire after the start of a new plan year, who meets the eligibility requirements under paragraph (1)(A) of this subsection, may elect to participate in a health care reimbursement account prospectively for the remainder of the plan year.~~]

(C) [~~(D)~~] A qualifying life event as defined in §85.7(c) of this title (relating to Enrollment) will permit the following changes in election during the plan year, as provided in §85.7(c): [~~A change in family status, as defined in §85.7(c)(1)(A) of this title (relating to Enrollment) will permit an increase in the election amount during the plan year. A TexFlex election form must be completed and submitted within 30 days from the date the change in family status event occurs. The effective date of change will be the first day of the following month, unless the employee makes an election on the first day of the month and designates that to be the effective date.~~]

(i) an increase in the election amount, if the increase is consistent with the qualifying life event; or

(ii) a decrease in the election amount or cancellation of participation, if the qualifying life event is the death of the spouse or a dependent child of the employee.

(D) [~~(E)~~] An eligible employee [~~Eligible active employees and terminated employees with continuation health coverage under the Public Health Service Act on September 1, and terminated employees with a health care reimbursement account on August 31 will be eligible~~] shall have an opportunity to enroll or to change benefit options during the annual enrollment period. The annual enrollment period shall [~~will~~] be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year. [~~Employees on approved leave of absence without pay during the annual enrollment period who return to work after the start of a new plan year, and who meet the eligibility requirement under paragraph (1)(A) of this subsection will have 30 days from the eligibility date to enroll.~~]

(3) Duration of participation.

(A) Except as otherwise provided in subparagraph (C)(ii) of paragraph (2), an employee's [~~An active or terminated employee's~~] election to or not to participate in a health care reimbursement account shall be irrevocable for the plan year.

(B) An employee returning to active duty following termination of employment, or following a period of leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment) or a different requirement is imposed by the Family and Medical Leave Act of 1993 (FMLA). [~~An employee returning to active duty from an approved leave of absence without pay or transferring from one state agency or institution to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain the election in existence on the last active duty date or the date of transfer for the remainder of the plan year, unless as described in subparagraph (D) of this paragraph~~].

(C) (No change.)

(D) Notwithstanding any provision to the contrary in this Plan, if an employee [~~a participant~~] goes on a qualifying unpaid leave under the FMLA, [~~Family and Medical Leave Act of 1993 (FMLA),~~] to the extent required by the FMLA, the Plan Administrator will continue to maintain the employee's [~~participant's~~] health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the Plan Administrator will continue to provide benefits to the extent the employee opts to continue his coverage). If the employee opts to continue his coverage, the employee may pay his share of the premium in the same manner as a participant on the non-FMLA leave, including payment with after-tax dollars while on leave. The [~~or the~~] employee may also be given the option to pre-pay all or a portion of his share of the premium for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year). [~~Upon return from such leave, the employee will be permitted to reenter the Plan on the same basis the employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.~~]

§85.5. Benefits.

(a) (No change.)

(b) Health care reimbursement plan.

(1) (No change.)

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars that an employee [~~which a participant~~] may receive in any plan year for health care expenses under the health care reimbursement plan is $5,000 [~~$3,000~~]. In no event shall the monthly maximum salary reduction amount, exclusive of any administrative fees, exceed $416 [~~$250~~] per month, except an employee may prepay the health care election amounts for the remainder of the plan year by accelerating payroll deductions prior to or in anticipation of going on leave without pay or terminating (including retirement) employment, or an employee who is classified as a nine-month faculty member, and who elects to receive annual compensation in fewer than 12 [~~nine~~] months, shall[~~must~~] redirect the annual election amount in nine equal monthly amounts.

(c) Dependent care reimbursement plan.

(1) (No change.)

(2) Maximum benefit Available.

(A) Subject to any limitations imposed by these rules and the plan, to avoid discrimination, the maximum amount that an employee [~~which a participant~~] may receive in any plan year in the form of payment of or reimbursement for dependent care expenses under the dependent care reimbursement plan, is the lesser of:

(i) the employee's [~~participant's~~] earned income for the plan year (after all reductions in compensation including the reduction related to dependent care expenses);

(ii) the earned income of the employee's [~~participant's~~] spouse for the plan year; or

(iii) $5,000. ($2,500 in the case of a married employee who files a separate federal income tax return.) In no event shall the monthly maximum salary reduction amount, exclusive of any administrative fees, exceed $416 per month or $208 per month in the case of a married employee [~~participant~~] who files a separate federal income tax return, except an employee who is classified as a nine-month faculty member who elects to receive annual compensation in fewer than 12 [~~nine~~] months shall [~~may~~] redirect the annual election amount in nine equal monthly amounts.

(B) (No Change)

§85.7. Enrollment.

(a) Election of benefits.

(1) An eligible [~~active duty or terminated~~] employee may elect to or not to participate in the flexible benefits plan by making an election and executing an [~~a TexFlex~~] election form prior to the first day of an applicable period of coverage.

(2) An employee who becomes eligible after the beginning of the plan year has 30 days from the date of eligibility to elect or decline benefits by executing an [~~a TexFlex~~] election form.

(3) By executing an [~~a TexFlex~~] election form, the employee [~~participant~~] agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any [~~the~~] administrative fee [~~and for eligible terminated employees an additional 2% service~~

~~charge on the elected amount for continuation coverage authorized under the Public Health Service Act~~].

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall [~~will~~] be prior to the beginning of a new plan year. The annual enrollment period shall [~~will~~] provide [~~active duty employees and eligible terminated employees with continuation coverage under the Public Health Service Act with~~] an opportunity to change and to elect or decline benefit options.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an [~~a TexFlex~~] election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation.

(2) (No change.)

(c) Benefit election irrevocable except for qualifying life event [~~change in family status~~].

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and a change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event [~~an eligible change in family status occurs. The allowable change in election must be consistent with the change in family status event. Documentation, as prescribed by the plan administrator, must be submitted in support of the change in family status~~].

~~[(A) Health care reimbursement plan. A change in family status includes marriage; birth; adoption; placement for adoption; acquisition of UGIP eligible dependent; gaining legal custody of a child; spouse terminates employment or goes from full-time to part-time employment status; or spouse or dependent has a significant decrease or loss of coverage imposed by a third party provider. An eligible change in family status permits a participant to elect to participate or increase election amounts consistent with the change in family status event.]~~

~~[(B) Dependent care reimbursement plan. A change in family status includes marriage; divorce; annulment; death of spouse or dependent; dependent loses eligibility for UGIP; loss of legal custody of child; birth, adoption, placement for adoption; acquisition of UGIP eligible dependent; gaining legal custody of a child; termination or gaining of employment by a spouse; change from full-time to part-time or part-time to full-time employment status by employee or spouse; workshift change by employee or spouse; spouse goes on or returns from leave without pay; and a significant cost change imposed by a third party provider. An eligible change in family status permits a participant to change the election or to increase or decrease the election amount consistent with the change in family status event.]~~

(2) A qualifying life event occurs when an employee experiences one of the following changes: [~~A request to change election may not be made following a pay increase or decrease, pay shortage, paid leave, transfer to new agency, institution, or location within the same plan year, return to state or institution employment from leave with or without pay within the same plan year, financial hardship, loss of eligibility for health coverage by a health maintenance organization, or change in day care provider, unless imposed by a third party provider.~~]

(A) change in marital status;

(B) change in dependent status;

(C) change in employment status;

(D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Uniform Group Insurance Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event. [~~Changes will apply prospectively for the remainder of the plan year unless a subsequent family status change occurs during the plan year.~~]

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event. [~~The TexFlex election form requesting a change in coverage must be submitted within 30 days from the date the change in family status event occurs.~~]

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee [~~participant~~] shall be recovered by the State of Texas or institution of higher education through payroll withholding at least monthly during the plan year and remitted by the State of Texas or institution of higher education to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee [~~participant~~] or upon the return of the employee to active duty status from payroll withholding, for the total amount due. [~~Terminated or leave without pay employees with health care reimbursement account continuation coverage shall remit after-tax dollars, on a monthly basis, directly to the Employees Retirement System of Texas for the plan year, except as described in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation).~~]

(2) An employee's [~~A participant's~~] flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's [~~participant's TexFlex~~] election form plus any administrative fees.

(3) (No change.)

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

§85.13. Funding.

(a) Expenses of administration. Any expenses incurred in the administration of the flexible benefits plan will be paid from the State Employees Cafeteria Trust Fund. An administrative fee to defray costs of administering the plan may be imposed on any, or each, reimbursement account as the board of trustees determines to be necessary.

(b) Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll salary redirection. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize in writing, on

an [~~a TexFlex~~] election form, the exact amount of salary reduction, in addition to any [~~the~~] monthly administrative fee.

(2) Eligible health care reimbursement account participants on inactive employment status must continue to contribute to their health care reimbursement account with after-tax dollars paid directly to the Employees Retirement System of Texas in the exact amount of the election, plus any [~~2.0% service charge on election amount and~~] administrative fees. [~~The amount of the monthly administrative fee for each reimbursement account is $3.00.~~]

(3) The minimum amount an employee [~~a participant~~] may redirect monthly for each reimbursement account is $15. The maximum amount an employee [~~a participant~~] may redirect monthly for each reimbursement account is limited to the amount stipulated in §85.5(b) and (c) of this title (relating to Benefits). Any [~~The~~] administrative fee for a [~~each~~] reimbursement account is in addition to these minimum and maximum amounts.

(4)-(6) (No change.)

Filed with the Office of the Secretary of State, on June 17, 1999.

TRD-9903640
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: June 17, 1999
Expiration date: September 15, 1999
For further information, please call: (512) 867-7125

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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 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

22 TAC §163.6

The Texas State Board of Medical Examiners proposes an amendment to §163.6, concerning Procedural Rules for Licensure Applicants. The amendment will allow the board to consider licensing a physician whose license from another state has been cancelled, suspended, or restricted for reasons other than disciplinary.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Dr. Levy also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be allowing the board to consider licensing a physician whose license from another state has been cancelled, suspended, or restricted for reasons other than disciplinary. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.03(c) is affected by the proposed rule.

§163.6. Procedural Rules for Licensure Applicants.

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

(c) Applicants for licensure by endorsement:

(1) are required to complete an oath swearing that:

(A) the license certificate under which the applicant has most recently practiced medicine in the state or Canadian province from which the applicant is transferring to this state or in the uniformed service in which the applicant served is in full force and not restricted for cause, canceled for cause, suspended for cause, or revoked;

(B)-(D) (No change.)

(2) (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 June 21, 1999.

TRD-9903657
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 166. Physician Registration

22 TAC §166.1

The Texas State Board of Medical Examiners proposes an amendment to §166.1, concerning Physician Registration. The amendment adds a new subsection (d) which concerns the time frame for notifying the Board of a physician's change of address.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Dr. Levy also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be timely notification of a physician's change of address. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(c) is affected by the proposed rule.

§166.1. Physician Registration.

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

(d) Within 60 days of a physician's change of mailing or practice address from the addresses on file with the Board, a physician shall notify in writing the Board Licensure Division of such 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 June 21, 1999.

TRD-9903659
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 167. Reinstatement

22 TAC §§167.4–167.6

The Texas State Board of Medical Examiners proposes new §§167.4–167.6, concerning Best Interests of Physician, Best Interests of the Public and Collateral Attack Prohibited. The new sections will outline the criteria to be considered when making a determination of what is in the best interest of the physician and the public relating to the reinstatement of a physician's license.

The proposed review of Chapter 167 (concerning Reinstatement) is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Levy 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 careful consideration of the public and physician's best interest. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.10 is affected by the proposed rules.

§167.4. Best Interests of Physician.

Pursuant to Texas Revised Civil Statutes, Article 4495b, §4.10, a physician may be reinstated to the practice of medicine only if the physician demonstrates that the reinstatement is in the physician's best interests. Best interests of the physician may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

(1) a recognition and acceptance of any competency, technical, educational, training or ethical limitations as found in the Order leading to revocation, cancellation or suspension of a license;

(2) recognition and acceptance of the authority of the Board to license, discipline and regulate the physician for the protection of public health and welfare; and

(3) that risk of further disciplinary proceedings for the revocation, cancellation or suspension of the license of the physician will be minimal or minimized if the physician is returned to the practice of medicine.

§167.5. Best Interests of the Public.

Pursuant to Texas Revised Civil Statutes, Article 4495b, §4.10, a physician may be reinstated to the practice of medicine only if the physician demonstrates that the reinstatement is in the best interests of the public. Bests interests of the public may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

(1) remediation of any competency, technical, educational, training or ethical limitations as found in the Order leading to revocation, cancellation or suspension of a license;

(2) that risk of further disciplinary proceedings for the revocation, cancellation or suspension of the license will be minimal or minimized if the physician is returned to the practice of medicine and the public will adequately be protected, whether by probationary Order or other terms and conditions as agreed to by the physician or authorized by Texas Revised Civil Statutes, Article 4495b, §4.11 and §4.12;

(3) that a real and specific need for the physician's expertise, specialty or practice exists in the community where the physician plans to practice such that the need may not be met by other physicians;

(4) that an adequate practice plan will be in place to reduce or eliminate the risk of further disciplinary proceedings by the Board; and

(5) continued medical competency such that the physician is able to provide the same standard of medical care as any applicant for a license under Chapter 163 of this title (relating to Licensure). Further, the Board may require an applicant for reinstatement to meet the qualifications set forth in Chapter 163 of this title (relating to Licensure).

§167.6. Collateral Attack Prohibited.

In any contested case proceeding regarding a reinstatement application, the Order revoking, canceling or suspending a license shall not be subject to collateral attack as to its findings of fact or conclusions of law, provided, however, that the Order may be admissible and relevant for purposes of establishing the basis for the original action and subsequent efforts after the Order by the physician to demonstrate reinstatement of the license is in the best interests of the public and the applicant physician.

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 June 21, 1999.

TRD-9903658
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 173. Applications

22 TAC §173.1

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

The Texas State Board of Medical Examiners proposes the repeal of §173.1, concerning Applications. The repeal is necessary because chapters 173 and 175 are being combined to reorganize and update applications and fees. New Chapter 175 is proposed simultaneously in this issue of the *Texas Register*.

The proposed review of Chapters 173 and 175 (concerning Applications and Schedule of Fees and Penalties) was previously published in the September 18, 1998, issue of the issue of the *Texas Register* (23 TexReg 9583). The review of these Chapters was reproposed in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1643). The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Dr. Levy also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be updated rules. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The repeal is proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a) is affected by the proposed repeal .

§173.1. Applications.

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 June 21, 1999.

TRD-9903660
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 175. Schedule of Fees and Penalties

The Texas State Board of Medical Examiners proposes the repeal of §175.1-175.4, concerning Schedule of Fees and Penalties and new §§175.1-175.5, concerning Fees, Penalties, and Applications. Chapters 173 and 175 are being combined to reorganize and update applications and fees. The repeal of Chapter 173 is proposed simultaneously in the issue of the *Texas Register*

The proposed review of Chapters 173 and 175 (concerning Applications and Schedule of Fees and Penalties) was previously published in the September 18, 1998, issue of the issue of the *Texas Register* (23 TexReg 9583). The review of these Chapters was reproposed in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1643). The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the repeal and new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Levy 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 reorganization of the chapters and updated information. There will be an estimated increase to state revenue of $90,920. The following is a breakdown: $58,700 for new permits; $24,720 for renewals; and $7,500 for approval of fellowship programs. There is no impact on small businesses. There is an increase in fees to those required to comply of $15-$25 annually. In addition there is a fee for approval of fellowship programs of $150, which is a new fee.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

22 TAC §§175.1–175.4

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(k) is affected by the proposed repeals.

§175.1. Fees.
§175.2. Penalties.
§175.3. Payment of Fees or Penalties.
§175.4. Partial Refund.

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 June 21, 1999.

TRD-9903661
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 175. Fees Penalties and Applications

22 TAC §§175.1–175.5

The new sections are proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(k) is affected by the proposed new sections.

§175.1. Fees.
The board shall charge the following fees.

(1) Physicians:

(A) processing an application for complete or partial licensure examination (includes one USMLE Step 3 or COMLEX Level 3 and jurisprudence examination fee) -$800;

(B) processing an application for licensure by endorsement (includes one jurisprudence examination fee) - $800;

(C) examination fees (required and payable each time applicant is scheduled for examination):

(i) USMLE Step 3 - $500;

(ii) COMLEX Level 3 - $500;

(iii) Jurisprudence - $30;

(D) processing an application for a special purpose license for practice of medicine across state lines (includes one jurisprudence examination fee) - $800;

(E) temporary license:

(i) regular - $50;

(ii) distinguished professor - $50;

(iii) state health agency - $50;

(iv) section 3.0305 - $50;

(v) rural/underserved areas - $50;

(vi) continuing medical education - $50;

(F) annual renewal - $310.

(2) Physicians in Training:

(A) institutional permit (began training program prior to 6-1-2000) - $50;

(B) renewal of institutional permit (began training program prior to 6-1-2000) - $35;

(C) basic postgraduate resident permit - $75;

(D) advanced postgraduate resident permit - $75;

(E) temporary postgraduate resident permit - $50;

(F) renewal of basic postgraduate resident permit - $50;

(G) renewal of advanced postgraduate resident permit - $50;

(H) faculty temporary permit - $110;

(I) visiting professor permit - $110;

(J) evaluation or re-evaluation of postgraduate training program -$150.

(3) Physician Assistants:

(A) processing application for licensure as a physician assistant - $200;

(B) temporary license - $50;

(C) annual renewal - $150.

(4) Acupuncturists/Acudetox Specialists:

(A) processing an application for license as an acupuncturist - $300;

(B) temporary license for an acupuncturist - $50;

(C) annual renewal for an acupuncturist - $250;

(D) acupuncturist distinguished professor - $50;

(E) processing an application for acudetox specialist - $50;

(F) annual renewal for acudetox specialist - $25;

(G) review of continuing acupuncture education courses - $50;

(H) review of continuing acudetox acupuncture education courses - $50.

(5) Non-Certified Radiologic Technicians:

(A) processing an application - $50;

(B) annual renewal - $50.

(6) Certification as a Non-Profit Health Organization:

(A) processing an application for initial certification - $2,500;

(B) processing an application for biennial recertification - $500.

(7) Miscellaneous Fees:

(A) duplicate license - $45.

(B) endorsement - $40.

(C) reinstatement after cancellation for cause - $350.

§175.2. Penalties.

The board shall charge the following penalties:

(1) Physicians:

(A) renewal of physician's license expired for 31-90 days - $55;

(B) renewal of physician's license expired for longer than 90 days but less than one year - $110.

(2) Physician Assistants:

(A) renewal of physician assistant's license expired for 90 days or less - $50;

(B) renewal of physician assistant's license expired for longer than 90 days but less than one year - $100.

(3) Acupuncturists/Acudetox Specialists:

(A) renewal of acupuncturist's license expired for 90 days or less - $50;

(B) renewal of acupuncturist's license expired for longer than 90 days but less than one year - $100;

(C) renewal of acudetox specialist certification expired for less than one year - $25.

(4) Non-Certified Radiologic Technicians. Renewal of non-certified radiologic technician's registration expired for 1-90 days - $25.

§175.3. Payment of Fees or Penalties.

All licensure fees or penalties must be submitted in the form of a money order or cashier's check payable on or through a United States bank. Fees and penalties cannot be refunded. If a single payment is made for more than one individual permit, it must be made for the same class of permit and a detailed listing, on a form prescribed by the board, must be included with each payment.

§175.4. Partial Refund.

Fees for processing an application for complete or partial licensure examination may be subject to a partial refund equal to the cost of the examination. The applicant must request a refund before April 1, because the applicant has been accepted in an out-of-state training program starting in June or July as a result of the National Matching Program and elects to not take the licensure examination in Texas.

§175.5. Applications.

(a) All information required on applications used by this board will conform to the Medical Practice Act and rules promulgated by this board. The board hereby adopts by reference the following forms:

(1) Physicians:

(A) application for licensure by examination;

(B) application for licensure by endorsement;

(C) application for a special purpose license for practice of medicine across state lines;

(D) application for temporary license;

(E) application for annual renewal of physician's permit.

(2) Physicians in Training:

(A) application for institutional permit (physician began program prior to 5-31-2000);

(B) application for renewal of institutional permit (physician began program prior to 5-31-2000);

(C) application for basic postgraduate resident permit;

(D) application for advanced postgraduate resident permit;

(E) application for temporary postgraduate resident permit;

(F) application for renewal of basic postgraduate resident permit;

(G) application for renewal of advanced postgraduate resident permit;

(H) application for faculty temporary permit;

(I) application for visiting professor permit;

(J) application for National Health Service Corps Permit.

(3) Physician Assistants:

(A) licensure application;

(B) application for temporary license;

(C) notice of intent to supervise a physician assistant;

(D) notice of intent to practice as a physician assistant;

(E) application for annual renewal of license.

(4) Acupuncturists/Acudetox Specialists:

(A) licensure application for acupuncturist;

(B) application for acupuncturist temporary license;

(C) application for acupuncture distinguished professor temporary license;

(D) application for annual renewal of acupuncturist license;

(E) application for acudetox specialist certification;

(F) application for annual renewal of acudetox specialist certification;

(G) application for approval of continuing acupuncture education courses;

(H) application for approval of continuing acudetox acupuncture education courses.

(5) Non-Certified Radiologic Technicians:

(A) application for non-certified radiologic technician permit;

(B) application for annual renewal of non-certified radiologic technician.

(6) Certification as a Non-Profit Health Organization:

(A) application for initial certification;

(B) application for biennial recertification.

(7) Miscellaneous Applications:

(A) application for a duplicate license;

(B) application for reinstatement of medical license for cause;

(C) physician designation of prescriptive delegation.

(b) These forms may be examined and copies may be obtained at the offices of the Texas State Board of Medical Examiners, 333 Guadalupe, Tower 3, Suite 610, Austin, Texas.

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 June 21, 1999.

TRD-9903662
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305–7016

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Chapter 179. Investigations Files

22 TAC §179.2

The Texas State Board of Medical Examiners proposes an amendment to §179.2, concerning Request for Information and Records from Physicians. A new subsection (f) is added, which concerns timely responses to written requests for information.

The proposed review of Chapter 179 (§§179.1-179.6, concerning Investigation Files) 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.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Dr. Levy also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be timely responses to written requests for information. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The amendment is proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09 and §4.02 are affected by the proposed rule.

§179.2. Request for Information and Records from Physicians.

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

(f) In addition to the requirements of responding or reporting to the Board under this section, a physician or license holder of the Board shall respond in writing to all written Board requests for information within 30 days of receipt of such request. Failure to timely respond may be grounds for disciplinary action by the Board.

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 June 21, 1999.

TRD-9903663
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305-7016

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Chapter 183. Acupuncture

22 TAC §183.7, §183.13

The Texas State Board of Medical Examiners proposes amendments to §183.7 and §183.13, concerning Denial of License; Discipline of Licensee and Patient Records. The amendments concern the time frame for the requirement of physician referral; the maximum number of treatments performed before referral to a physician; and referrals from chiropractors.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Levy 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 updated requirements regarding referrals. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The amendments are proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, Subchapter F is affected by the proposed rules.

§183.7. Denial of License; Discipline of Licensee.

(a)-(d) (No change.)

(e) Scope of Practice.

(1) Except as provided by paragraph (2) of this subsection, a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the holder of a license has performed acupuncture on a person who was not evaluated by a physician or dentist, as appropriate, for the condition being treated within 12 months before the date acupuncture was performed.

(2) The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 30 times or for 120 days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, an acupuncturist holding a current and valid license may without a referral from a physician, dentist, or chiropractor perform acupuncture on a person for smoking addiction, weight loss, or, as established by the medical board with advice from the acupuncture board by rule, substance abuse.

§183.13. Patient Records.

(a) Acupuncturists licensed under the Act shall keep and maintain adequate records of all patient visits or consultations which shall, at a minimum, include:

(1)-(7) (No change.)

(8) a written record regarding whether or not a patient was evaluated by a physician or dentist, as appropriate, for the condition being treated within 12 [~~six~~] months before the date acupuncture was performed as required by §183.7(e) of this title (relating to Denial of License; Discipline of Licensee)[~~the Act, §6.11(b)~~];

(9) a written record regarding whether or not a patient was referred to a physician after the acupuncturist performed acupuncture 30 [~~20~~] times or for 120[~~30~~] days, whichever occurs first, as required by §183.7(e) of this title [~~the Act, §6.11(e),~~] in regard to treatment of patients upon referral by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners;

(10) in the case of referrals to the acupuncturist of a patient by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners, the acupuncturist shall record the date of the referral and the most recent date of chiropractic treatment prior to acupuncture treatment; and,

(11) reasonable documentation that the evaluation required by §183.7(e) of this title [~~the Act, §6.11(b),~~] was performed or, in the event that the licensee is unable to determine that the evaluation took place, a written statement signed by the patient stating that the patient has been evaluated by a physician within the required time frame on a copy of the following form:
Figure: 22 TAC 183.13(a)(11)

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

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

Filed with the Office of the Secretary of State, on June 21, 1999.

TRD-9903664
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 305-7016

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Chapter 187. Procedure

Subchapter D. Posthearing

22 TAC §187.39

The Texas State Board of Medical Examiners proposes an amendment to §187.39, concerning Administrative Penalties. The amendment will increase the minimum administrative penalty for failure to timely obtain and report continuing medical education (CME) as required by Board rule.

Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, has determined that for the first five-year period the amendment is in effect the fiscal impact to physicians required to comply with the amendment will be an increase from $100 to $500 minimum. The increased revenue to the state is estimated at $4,000.

Dr. Levy also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be enforcement of continuing medical education. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The amendment is proposed 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.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.125 is affected by the proposed rule.

§187.39. Administrative Penalties.

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

(f) Pursuant to the Medical Practice Act, §4.125 and §4.02(h), the board staff, with the approval of the Disciplinary Process Review Committee, may submit a proposed agreed order to a person licensed or regulated under the Medical Practice Act to resolve allegations of failure to release medical records as required by the Medical Practice Act, §5.08, or board rule, overcharging or overtreating as prohibited by the Medical Practice Act, §3.08(4)(G), the corporate practice of medicine as prohibited by the Medical Practice Act, §3.08(15), failure to comply with the complaint procedure notification requirements of the Medical Practice Act, §2.09(s)(2), and board rules, failure to timely obtain and report continuing Medical Education (CME) hours required by board rule, or failure to timely comply with the provisions of a board order, so long as the person who is the subject of the

allegations has not been previously disciplined by the board except in the case of an administrative penalty for untimely compliance with a board order, and so long as the administrative penalty is consistent with the following guidelines.

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

(5) The failure to timely obtain and report Continuing Medical Education (CME) required by board rule shall be grounds for imposition of an administrative penalty of no less than $500 [~~$100~~] and no more than $5,000 for each separate violation.

(6) (No change.)

(g)-(l) (No change.)

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

Filed with the Office of the Secretary of State, on June 21, 1999.

TRD-9903665

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: August 1, 1999

For further information, please call: (512) 305-7016

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License

22 TAC §§535.61–535.66

The Texas Real Estate Commission (TREC) proposes new §535.61, concerning examinations, §535.62, concerning acceptable courses of study, §535.63, concerning education and experience requirements for a license, §535.64, concerning accreditation of schools and approval of courses and instructors, §535.65, concerning changes in ownership or operation of school; presentation of courses, advertising and records, and §535.66, concerning payment of annual fee, audits, investigations and enforcement actions. These new sections would replace current sections addressing the same subjects and adopt by reference a series of revised forms relating to instructors and accredited schools. The new sections are proposed in connection with TREC's pending review of Chapter 535 of the Texas Administrative Code and are intended to reorganize the sections by related topic, shortening the sections whenever possible and making them easier for the public to use. With regard to education required for a real estate license, the proposed new sections also are intended to enhance the quality of the education required of prospective licensees while removing unnecessary restrictions on education providers. The forms used by instructors and schools would be revised to shorten the forms and eliminate requests for unnecessary information. The bond form would be revised to clarify that TREC may make claims on the bond on behalf of the students attending the school.

New §535.61 addresses the confidentiality of the contents of TREC's licensing exams and provides grounds for action against licensees or applicants for obtaining or attempting to obtain examination questions and answers for the purpose of using the information to pass an examination or providing the information to another person who is either an applicant or a potential applicant. Because TREC examinations are administered by a testing service under contract with TREC, the new section would require examinations to be conducted in accordance with the contract. The new section also specifies identification requirements for examinees, restrictions on the use of calculators and waiver of the examination for prior licensees. The new section would require applicants with a disability to contact the testing service to arrange for desired accommodation.

New §535.62 specifies the requirements for TREC to accept courses of study to satisfy the educational requirements for a real estate license. Courses may be either core real estate courses, the content of which are set by Texas Civil Statutes, Article 6573a, §7(a),or by TREC rule, or real estate related courses which TREC has determined to be acceptable. If content requirements are satisfied, courses would be acceptable if offered by a wide range of providers, including schools accredited by TREC, accredited colleges or universities, or professional trade associations. The new section also provides a means of measuring the number of classroom hours of credit awarded by a provider using semester or quarter hours or continuing education units. For acceptance of a core real estate course , the new section would require the daily course presentation not to exceed eight hours, and the student must either have been in the classroom for the hours of credit granted by the provider or completed makeup in accordance with the section. The new section also provides specific requirements, including a final examination, for any provider's core course offered by correspondence or an alternative delivery system such as a computer. Other restrictions on the acceptance of a core course addressed in the new section concern an applicant's submission of substantially similar courses, courses primarily concerning techniques or procedures of a particular brokerage or organization, or courses for which credit is based on life experience or an examination.

New §535.63 concerns experience and education requirements for a real estate license. The new section would combine current provisions relating to broker and salesperson license applications and readopt an exemption for applicants licensed within a seven year period prior to filing the application. The new section also would continue the requirement that an applicant for a broker license have completed at least 180 classroom hours of courses whose titles or course descriptions reflect a real estate discipline such as the core real estate courses listed in the Act or approved by TREC.

New §535.64 concerns the accreditation of real estate schools and approval of courses and instructors. The new section would adopt by reference revised application forms, a school surety bond form, and guidelines for the development of an instructor's manual for a course. The forms have generally been shortened by the elimination of unnecessary questions. Schools accredited prior to the effective date of the section would be required to apply for accreditation prior to January 1, 2001, when prior accreditations would expire. Instructors approved prior to the effective date of the section also would be required to apply for approval to teach at an accredited school

after January 1, 2001. New accreditations and approvals would be for five-year periods. The new section establishes standards and procedural guidelines for the accreditation and approval processes for schools, courses and instructors.

New §535.65 addresses operation of a school after it has been accredited. Material changes in operation, including a change of ownership or management, would require prior approval by the commission, and , in the case of a change in ownership, information from the new owners corresponding to that submitted with an original application for accreditation. The new section also specifies requirements for the school facilities. With the exception of classes held in facilities to which a government entity may limit access, classes must be open to the public, whether held in the school facility or in a location such as a broker's office. Schools would be responsible for each course, and the new section would provide specific guidelines for the use of approved instructors or limited use of guest speakers, the number of questions, passing scores and procedures for required course examinations, the mandatory content of pre-enrollment agreements, the school's obligation to provide students with course materials, presentation of courses, course credit and records, acceptable make-up of missed classes, and prohibited advertising practices.

New §535.66 addresses the school's payment of an annual fee based on the anniversary date of the school's accreditation. The new section also provides guidelines for audits of the school by commission employees, complaints, investigations and hearings. Grounds for disciplinary action against schools and instructors are detailed, with specific indicators to show when a school's financial condition is insufficient for continuing operation, such as nonpayment of three or more liabilities when due.

Don Dudley, director of licensing and education, has determined that for the first five-year period the sections are in effect there will be fiscal implications for the state as a result of enforcing or administering the sections. If currently accredited schools are required to reapply for accreditation, and the current application fee of $400 is collected from each school, the state would receive estimated additional revenues of $12,000 in FY 2000 and every five years thereafter. No fiscal implications are involved for units of local government. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Dudley 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 greater ease in reading and following TREC rules and an enhancement of the educational process for potential licensees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the filing fee for accreditation of a school, currently set at $400.

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 new sections 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.

§535.61. Examinations.

(a) The contents of examinations administered by the commission or by a testing service under contract with the commission are confidential. The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider or instructor approved by the commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service, for the purpose of using the information to pass an examination or for the purpose of providing the questions or answers to another person who is either an applicant or a potential applicant;

(2) removing or attempting to remove questions or answers from an examination site; or

(3) providing or attempting to provide examination questions or answers to another person, knowing the person is an applicant or prospective applicant, or that the person intends to provide the questions or answers to an applicant or potential applicant.

(b) Examinations required for any license issued by the commission will be conducted by the testing service with which the commission has contracted for the administration of examinations. The testing service shall schedule and conduct the examinations in the manner required by the contract between the commission and the testing service. To pass the examination, an applicant must attain a passing score in each section of the examination.

(c) An applicant will not be admitted to the testing service's examination site unless the applicant provides a government issued photo-bearing identification card. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(d) Applicants may use slide rules or silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the testing service must approve use of such calculator prior to the examination. Applicants may not use calculators with alphabetic keyboards.

(e) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange for a special examination. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(f) The commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.

§535.62. Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by Texas Civil Statutes, Article 6573(a) (the Act), §7(a) and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically publish lists of acceptable real estate related courses.

(b) The commission may require an applicant to furnish materials such as course outlines, syllabi and course descriptions in support of credit instruments. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a real estate broker or real estate salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or the real estate regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) a professional trade association.

(c) The commission shall measure classroom hour credits using the following equivalents:

(1) One semester hour: 15 hours.

(2) One quarter hour: 10 hours.

(3) One continuing education unit: 10 hours.

(d) A core real estate course also must meet the following requirements to be accepted.

(1) The course contained the content required by Texas Civil Statutes, Article 6573a, (the Act), §7, or this section.

(2) The daily course presentation did not exceed eight hours.

(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, the student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(5) For a correspondence course, successful completion of a written final examination was a requirement for receiving credit from the provider, and the examination was administered under controlled conditions to positively identified students.

(6) For a course offered by an alternative delivery method, the course met the requirements of §535.73(r) of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).

(7) The student must not have completed more than one course with substantially the same course content within a three year period.

(8) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.

(f) In addition to the courses of study specified in the Act, §7(a), the following shall be considered core real estate courses.

(1) Promulgated Contract Forms (or equivalent) shall include but not be limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, inspection standards of practice and standard inspection report form, tools and procedures, electro mechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

§535.63. Education and Experience Requirements for a License.

(a) License or experience in another state. Except as provided by this section, the commission will not accept a person's license in another state or experience in real estate brokerage or any related business in satisfaction of education or experience required for a license.

(b) Education and experience requirements for a broker license.

(1) Experience as a real estate broker or salesperson is accepted as experience for the purpose of applying for a real estate broker license. Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

(2) The commission may waive education and experience required for a real estate broker license if the applicant satisfies the following conditions.

(A) The applicant must have been licensed as a Texas real estate broker or salesperson no more than six years prior to the filing of the application.

(B) If the applicant was previously licensed as a Texas real estate broker, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant must satisfy all current education requirements for an original broker license.

(C) The applicant must have had not less than two years of active experience as a licensed real estate broker or salesperson during the eight-year period prior to the filing of the application.

(3) Under the Texas Civil Statutes, Article 6573a (the Act), Section 7(g), a person who is the designated officer of a corporation or limited liability company which is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. The term "state" means one of the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof. A person licensed in another state may derive the required two years' experience from periods in which the person was licensed in two or more states. A

person whose real estate broker license is on inactive status is deemed to be a licensed real estate broker in another state.

(4) With respect to the education requirement of 60 semester hours in effect on or after January 1, 1985, the commission shall require not less than 12 semester hours (180 classroom hours) in courses reflecting course titles or course descriptions in the real estate disciplines including, but not limited to, the statutory subject areas identified in the Act, §7(a) and §7(j). The commission will publish periodically guidelines as to the acceptability of related courses. Provided, however, that an applicant for a broker license who was licensed as a salesperson subject to the annual education requirements set forth in this Act must provide the commission satisfactory evidence of having completed 12 semester hours (180 classroom hours) of core real estate courses that would have been required for the applicant's third annual renewal of a salesperson license.

(c) Education requirements for a salesperson license.

(1) In order to maintain a license, a salesperson subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than the day the salesperson files an application with the commission to renew the salesperson's license.

(2) The commission may waive the education required for a real estate salesperson license if the applicant satisfies the following conditions.

(A) The applicant must have been licensed either as a Texas real estate broker or as a Texas real estate salesperson no more than six years prior to the filing of the application.

(B) The applicant must have must completed any core real estate courses or real estate related courses which would have been required for a timely renewal of the prior license, or if the renewal of the prior license was not subject to the completion of core real estate courses or real estate related courses, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) Application. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to Texas Civil Statutes, Article 6573a, (the Act), §7(f), shall file an application on forms adopted by the commission accompanied by the fee prescribed pursuant to §11(9) of the Act. The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.

(b) Standards for approval of application for accreditation. To be accredited as a school, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person, such as an independent contractor, to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant also must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes.

(c) Financial review. The commission shall review the financial condition of each proposed school to determine whether the school has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(1) personal financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth of each person who proposes to act as an owner or shareholder of the applicant or the school;

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(d) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by the Act, §7(f), the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of five years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period. If a school was accredited prior to the effective date of this section, the accreditation of the school expires January 1, 2001, and the school may apply for accreditation at any time.

(f) Disapproval of application. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Form ED 1-0, Education Provider Application;

(2) Form ED 2-0, Principal Application;

(3) Form ED 3-0, Course Application;

(4) Form ED 3A-0, Course Supplement Application;

(5) Form ED 4-0, Instructor Application;

(6) Form ED 5-0, Real Estate Provider Bond;

(7) Form ED 6-0; Evaluation Form; and

(8) Form ED 7-0, Instructor Manual Guidelines

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-0 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3A-0, file the form with the commission and

receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-0, Instructor Manual Guidelines.

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter and ability to teach effectively. Each instructor must also possess the following qualifications:

(1) a college degree in the subject area or five years professional experience in the subject area; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(j) Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(k) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period. If an instructor was approved prior to the effective date of this section, the approval of the instructor expires January 1, 2001, and the instructor may apply for approval at any time.

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (g) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity , or for any reason which would be a ground to suspend or revoke a real estate license. Appeals from application disapprovals will be conducted in the manner required by the Act, §10. Hearings are subject to the Administrative Procedure Act, Texas Government Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(m) Examination preparation courses. No school may be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for any license issued by the commission. A school may offer an examination preparation course on a non-credit basis, provided the requirements of subsection (e) of this section have been met.

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.

(a) Changes in Ownership or Operation.

(1) A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.64 of this title (relating to Accreditation of Schools and Approval of Instructors). A school requesting approval of a change in ownership shall provide the following information or documents to the commission:

(A) the proportion of ownership of each proposed new owner,

(B) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;

(C) personal financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;

(D) a statement of any proposed changes in the operation or location of the school;

(E) a new bond in the amount of $10,000 for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under the Act, §7(f).

(F) a completed Form ED 1-0, Education Provider Application, reflecting all required information for the proposed new owner(s); and

(G) a completed Form ED 2-0, Principal Information Form, for each proposed new owner who would hold at least a 10% interest in the school.

(b) School facilities.

(1) A school shall maintain a fixed office in the State of Texas. The office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service. A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(2) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(c) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(d) Instructors.

(1) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has

not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(2) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

(3) A school shall provide instructor evaluation forms for completion by students in every class and establish procedures for instructional review. The school shall file in the school records any comments by the school's management relevant to instructor evaluation reports. On demand by the commission the school shall produce student instructor evaluation forms for inspection.

(4) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of subsection (a) of §535.61 of this title (relating to Examinations).

(e) Course examinations.

(1) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(2) A school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by statute or commission rule for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(f) Pre-enrollment agreements, tuition and fees.

(1) Prior to the start of a course, a school shall provide each student with a pre- enrollment agreement signed by a representative of the school and the student. The agreement must include the following information:

(A) the tuition for the course;

(B) any fees charged by the school for supplies, materials, or books needed in course work, shown in an itemized fashion;

(C) the school's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily ;

(D) attendance requirements;

(E) acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

(F) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(2) If the school cancels a course due to inclement weather, insufficient enrollment, instructor unavailability, or for any other reason, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(3) Any written advertisement by the school which contains a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(g) Course materials.

(1) A school shall update course materials during the period of time a course may be given to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(2) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for note taking or completion of any written exercises.

(h) Presentation of courses.

(1) A school shall present core real estate courses prescribed by the Act, §7(a) and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the full clock hours of time for which credit is awarded.

(2) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons such as taking medication or responding to the call of nature.

(i) Course credit and records.

(1) Within ten days following the completion of a course, a school shall provide the commission with a class roster in a format approved by the commission. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

(A) "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

(B) "Failed" must be limited to those students who had acceptable classroom attendance but failed the final course examination. If, however, the school permits the student to retake

the examination in accordance with subsection (e) of this section, the first failure must be reported as an incomplete grade.

(C) "Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two/thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than one student on the report if all students were in the same original class.

(D) "Dropped" must be limited to those students who missed more than two/thirds of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.

(2) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.

(3) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(4) A school shall maintain records of each student enrolled in any course for a minimum of five years. The full class file and student enrollment agreements must be retained for at least 12 months following completion of the class.

(5) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records.

(j) Advertising. The following practices are prohibited:

(1) using any advertising which does not contain the school's name;

(2) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(3) conveying a false impression of the school's size, importance, location, equipment or facilities or

(4) making unsubstantiated claims that the school's programs are superior to any other course of instruction;

(5) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

(6) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression.

§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

(a) Payment of annual fee. A school shall pay the fee prescribed by Section 11(10) of Texas Civil Statutes, Article 6573a (the Act) and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice.

(b) Audits and evaluations. Schools are subject to audit by commission employees. Commission employees may conduct audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. Commission employees also may evaluate the effectiveness of course materials or instructors through surveys of students. The commission may require a school to furnish students with an evaluation form approved by the commission and to request that the students complete and return the form directly to the licensing and education division of the commission. An audit report or evaluation indicating noncompliance with these sections will be treated as a written complaint against the school or instructor concerned and will be referred to the enforcement division of the commission for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred.

(c) Complaints, investigations and hearings. Complaints, investigations, and hearings involving schools accredited by the commission and instructors are governed by the provisions of §535.73 of this title (relating to Compliance and Enforcement). Proceedings against schools and instructors will be conducted in the manner required by the Act, §17.

(d) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or

by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor; or

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss. The existence of any of the following conditions shall constitute prima facie evidence that a school's financial condition is insufficient for continuing operation:

(A) nonpayment of a liability when due, if the balance due is greater than 5.0% of the school's current assets in the current or prior accounting period;

(B) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(C) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(D) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(E) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(F) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(G) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(H) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(I) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(J) execution of a writ of garnishment on any of the assets of the school.

(e) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision 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.

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

TRD-9903550
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 465–3900

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 119. Control of Air Pollution from Carbon Monoxide

30 TAC §§119.1–119.7

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

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§119.1-119.7, concerning Control of Air Pollution from Carbon Monoxide (CO).

EXPLANATION OF PROPOSED REPEAL

Chapter 119 requires the incineration of vent gas streams from blast furnaces, iron cupolas, and catalyst regeneration units for the purpose of controlling emissions of CO. The chapter applies only in Aransas, Bexar, Brazoria, Calhoun, Dallas, El Paso, Galveston, Harris, Jefferson, Matagorda, Montgomery, Nueces, Orange, San Patricio, Travis, Victoria, Hardin, and Tarrant Counties.

The commission has reviewed the rules in Chapter 119 and determined that a need for those rules no longer exists. Through a search of the emission inventory (EI) data base, the commission determined that, with one exception, sources that are the subject of this rule are either subject to more restrictive air pollution control conditions of new source review permits or, in the case of blast furnaces, no longer exist. The EI data indicates that there is a single iron cupola in Harris County emitting approximately 15 tons per year (tpy) of CO. Due to the small size of the source, the incineration is not required for the reduction of CO to protect public health from air pollution.

Additionally, the vent gas incineration method required by Chapter 119 is an ineffective method of CO control and produces nitrogen oxides (NO_x). NO_x is a precursor gas to ozone formation, and the commission is implementing a policy of NO_x control in those areas of the state failing to meet the National Ambient Air Quality Standards for ozone. Sources under the air pollution control conditions of permits are required to use CO control technology which reduces CO while limiting the production of NO_x. Certain sources, such as catalyst regeneration units, remain subject to the CO emission limitations in 40 Code of Federal Regulations (CFR) §60.103.

The control method specified in Chapter 119 requires incineration of CO containing waste gas at 1,300 degrees Fahrenheit. This temperature is not high enough to convert the CO to CO_2. The minimum temperature required to begin the combustion of CO is 1,400 degrees. Therefore, the requirements of Chapter 119 do not result in any significant decrease in CO, but do produce NO_x.

The control requirements of Chapter 119 are not necessary to protect the air resources of the state; accordingly, the commission has determined that the chapter can be safely repealed without creating a threat to public health.

Certain sources, such as catalyst regeneration units, remain subject to the CO emission limitations in 40 CFR §60.103, but not to a specific and ineffective control method as required by Chapter 119. Any new source that would be a significant producer of CO will be subject to these limits as well as the air pollution control conditions of either new source review or prevention of significant deterioration permitting.

FISCAL NOTE

Jeff Grymkoski, Director of Strategic Planning and Appropriations, has determined that for the first five-year period the proposed repeals are in effect, there will be no significant fiscal implications for state government or units of local government. This action removes relatively ineffective and little used control requirements and will not require any new expenditures for affected industries.

PUBLIC BENEFIT

Mr. Grymkoski also has determined that for each of the first five years the proposed repeals are in effect the public benefit will be removal of an ineffective regulation. Evaluation of affected sources, control technologies, and computer dispersion modeling demonstrates that Chapter 119 may be safely repealed without creating a threat to public health.

SMALL BUSINESS ANALYSIS

Because this action will not impose any new regulatory requirements, there will be no effect on small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

This action does not impose any new regulatory requirements. The control method required by Chapter 119 is unnecessary and ineffective in reducing CO and has been replaced by more effective best available control technology (BACT) as applied through permits. Chapter 119 applies to only three types of sources: blast furnaces, iron cupolas, and catalyst regeneration units. There are no blast furnaces left in the state that are not under permit. There is only one iron cupola in the affected counties. This source emits less than 15 tpy of CO and is an insignificant source. The commission concludes that the repeal of Chapter 119 does not result in a significant increase in ambient levels of CO and is not a threat to public health. Therefore, this repeal will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It does not meet the definition of a major environmental rule under Texas Government Code, §2001.0225(f)(3). The public may comment on this draft regulatory impact analysis under Texas Government Code, §2001.29.

TAKINGS IMPACT ASSESSMENT

This action does not add new regulatory requirements. It does not restrict or limit rights to an owner's private property that would otherwise exist in the absence of this proposed action. This proposal, therefore, does not meet the definition of a takings under Texas Government Code, §2007.002(5).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed repeal of Chapter 119, the commission has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action is consistent with 40 CFR because it does not authorize an emission rate in excess of that specified by federal requirements. This action removes a regulation that is unnecessary and ineffective in controlling CO. Additionally, the control requirements of Chapter 119 would increase NO_x emissions in areas where NO_x contributes to ozone formation. Based on dispersion modeling, the commission concludes that the repeal will not result in a significant increase in ambient concentration of CO. Certain sources, such as catalyst regeneration units, remain subject to the CO emission limitations in 40 CFR §60.103.

PUBLIC HEARING

A public hearing on this proposal will be held July 26, 1999, at 2:00 p.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 98035- 119-AI. Comments must be received by 5:00 p.m., August 2, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

STATUTORY AUTHORITY

The repeals are proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeals implement Texas Health and Safety Code, §382.012, concerning State Air Control Plan; and §382.017, concerning Rules.

§119.1. Counties Affected.

§119.2. Control Requirements for Specified Processes.

§119.3. Control Requirements for Iron Cupolas.

§119.4. Control Requirements for Blast Furnaces.

§119.5. Exceptions.

§119.6. Alternative Methods of Control.

§119.7. Compliance.

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 June 17, 1999.

TRD-9903630
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 8, 1999
For further information, please call: (512) 239–1932

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 81. Insurance

34 TAC §§81.1, 81.5, 81.7, 81.11

(Editor's note: The Employees Retirement System of Texas proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Employees Retirement System of Texas (ERS) proposes amendments to §§81.1, 81.5, 81.7, and 81.11, concerning the Uniform Group Insurance Program (UGIP). Section 81.1 is amended to remove long and short term disability insurance premiums from the definition of "insurance premium expenses" covered by the premium conversion plan; §81.5 is amended to permit certain retirees not covered by optional life insurance or dependent life insurance at the time of retirement an opportunity to apply for minimum retiree optional life insurance and dependent life insurance coverage. Section 81.5 is also amended to permit both parents to carry dependent life and accident insurance on a child if both parents are participants in the UGIP; §81.7 is amended to make participation in the premium conversion plan mandatory and automatic, to make coverage of an adopted child effective on the date of placement for adoption, to make coverage in the life and accident plans begin at the date of birth and to clarify the definition of a qualifying life event for premium conversion purposes; and §81.11 is amended to reflect amendments made in §81.7.

William S. Nail, Deputy Executive Director and General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Nail also 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 a clarification of the eligibility and enrollment rules for the UGIP and the premium conversion plan. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or e-mail Mr. Nail at wnail@ers.state.tx.us.

The amendments are proposed under Insurance Code, Article 3.50-2, §4.

No other statutes are affected by these proposed amendments.

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 June 17, 1999.

TRD-9903641
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 867–7125

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Chapter 85. Flexible Benefits

34 TAC §85.1, 85.3, 85.5, 85.7, 85.13

(Editor's note: The Employees Retirement System of Texas proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Employees Retirement System of Texas (ERS) proposes amendments to §§85.1, 85.3, 85.5, 85.7, and 85.13, concerning the Flexible Benefits Program. Section 85.1 is amended to revise the definition of "leave of absence without pay"; §85.3 is amended to expand the class of employees eligible to participate in the Flexible Benefits Program, make changes to the effective date of elections, and expand the types of changes that a participant can make in the Health Care Reimbursement Account following a qualifying event; §85.5 is amended to increase the Health Care Reimbursement Account limit from $3,000 to $5,000; §85.7 is amended to add additional events upon which participants may make changes to their elections in the Flexible Benefits Program and to redefine a "change in family" status to be a "qualifying life event"; and §85.13 is amended to make changes to the administrative fees of the Flexible Benefits Program.

William S. Nail, Deputy Executive Director and General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Nail also 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 an enhanced employee benefit program for state employees. There will be no effect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas, 78711-3207, or e-mail Mr. Nail at wnail@ers.state.tx.us.

The amendments are proposed under Insurance Code, Art. 3.50-2, §4A and affects Insurance, Code Art. 3.50-2, §13B.

No other statutes are affected by this amendment.

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 June 17, 1999.

TRD-9903642
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 867-7125

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes amendments to §3.501 and §3.2710, concerning Household Determination and Strikers, in its Income Assistance Services chapter. The purpose of the amendments is to simplify policies so that food stamp and Temporary Assistance for Needy Families (TANF) policies are more similar. The amendments remove references to obsolete federal Aid to Families with Dependent Children (AFDC) regulations. The amendments specify that the family is not eligible for TANF if a legal parent is on strike, but no longer include a penalty for a child striker. The amendments also change references from AFDC to TANF to reflect the correct name of the program.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed sections will be in effect there will be minimal fiscal implications for state government as a result of enforcing or administering the sections. There will by a slight increase in TANF grants because a child who participates in a strike will no longer be disqualified. However, any cost to state government because of the increased grant will be offset by savings that result from the policy being more similar and the Texas Works advisor not spending so much time on the policy. There will be no fiscal implications for 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 that some households may have more money to spend because a child who participates in a strike will be eligible to be included in the grant. There will be no adverse economic effect on small businesses because there will be a slight increase in some grants. 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 Mary Haifley at (512) 438-2599 in DHS's Texas Works Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-209, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter E. Household Determination

40 TAC §3.501

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

§3.501. Household Determination.

(a) Temporary Assistance for Needy Families (TANF) [~~Aid to Families with Dependent Children~~]. The following persons are included in a TANF [~~an AFDC~~] certified group:

(1) Caretaker. This is a financially eligible relative within the required degree of relationship who is physically present in the home and who supervises and cares for the children. Caretakers of SSI children are eligible for TANF [~~AFDC~~] if they meet all other TANF [~~AFDC~~] requirements.

(2) Second parent. This is the child's natural or adoptive parent. Inclusion of a second parent in the grant is based on the

need and incapacity of either parent. The second parent must meet all TANF [~~AFDC~~] eligibility requirements.

(3) Eligible child. Eligible children must be under age 18; or they may be under age 19 if they also regularly attend high school or high- school-level training on a full-time basis and expect to graduate before or during the month of their 19th birthday. The client may not choose to exclude a child from the certified group because of the child's income or resources. If the client fails to provide verification for a child who is a required member of the certified group, the Texas Department of Human Services (DHS) denies assistance for the entire certified group. The following persons must be included in the certified group with the eligible child:

(A) (No change.)

(B) siblings, unless they:

(i)-(ii) (No change.)

(iii) are ineligible for TANF [~~AFDC~~] based on citizenship, age, relationship, domicile, or deprivation.

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

(6) Persons in nursing homes. If a member of the TANF [~~AFDC~~] certified group enters a nursing facility, his needs are left in the TANF [~~AFDC~~] budget during his temporary stay in the facility or until he is certified for SSI.

(b) Temporary Assistance for Needy Families [~~Aid to Families with Dependent Children~~]. The following persons are not included in a TANF [~~an AFDC~~] certified group:

(1) Payee. This is a person in the household within the same degree of relationship required of a caretaker whose needs are not included in the TANF [~~AFDC~~] grant. The TANF [~~AFDC~~] warrant is issued to the payee when no one in the household qualifies or wants to be a caretaker.

(2) Protective payee. This is a person selected by DHS to receive and manage the TANF [~~AFDC~~] warrant if the caretaker does not comply with child support regulations or employment services requirements, or if the caretaker is not using the TANF [~~AFDC~~] payment for the children's benefit.

(3) Disqualified persons.

(A) Persons are disqualified because they:

(i)-(iv) (No change.)

(v) are caretakers and second parents (except for those who are members of the state welfare reform waiver control group as described in §3.6002 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code, §31.0065, Relating to Time-Limits) who have exhausted their time limits of 12, 24, or 36 months, assigned according to the guidelines in Human Resources Code, §31.0065 for receiving TANF [~~AFDC~~] cash benefits;

(vi)-(viii) (No change.)

(B) Once time limits are exhausted, the caretakers and second parents are not eligible to receive TANF [~~AFDC~~] cash benefits for five years, unless they have complied with employment services requirements during their time-limited months and meet one of the following hardship criteria:

(i) (No change.)

(ii) Local economic hardship is met if the client:

(I) lives in a county which is classified by DHS as economically depressed for purposes of TANF [~~AFDC~~] time limits. DHS determines a county is economically depressed if the county's unemployment rate exceeds 10%; or

(II) (No change.)

(iii)-(iv) (No change.)

(v) Employment hardship must be requested within 90 days after exhausting the TANF [~~AFDC~~] time limit, loss of a job, or the reduction of the number of work hours.

(C) A person disqualified after exhausting his TANF [~~AFDC~~] time limits pursuant to this subsection may reestablish eligibility by:

(i) (No change.)

(ii) making application after five complete years of disqualification or nonparticipation in the TANF [~~AFDC~~] program, except for participation pursuant to clause (i) of this subparagraph.

(4) Recipients of SSI, foster care, or adoption subsidy payments. DHS does not count resources or income of these recipients toward the needs of the TANF [~~AFDC~~] household.

(5) (No change.)

[~~(6) Strikers. DHS treats households with strikers as stipulated in 45 Code of Federal Regulations §233.106.~~]

(6) [~~(7)~~] Authorized Representatives. This is a person selected by the applicant or client to apply for and manage benefits on the household's behalf when the household is unable to conduct business due to incapacity or incompetence.

(c) Food stamps. DHS includes or excludes people from the food stamp household as specified in the Food Stamp Act of 1977 [~~1997~~] as amended by Title VIII, Section 821 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and as stipulated in Title I, Section 115 of the same act.

(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 June 18, 1999.

TRD-9903656
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Subchapter AA. Special Households

40 TAC §3.2710

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

§3.2710. Strikers.

(a) Temporary Assistance for Needy Families (TANF). The Texas Department of Human Services (DHS) determines a TANF

household's application or ongoing benefits ineligible for any month a certified or disqualified legal parent participates in a strike.

(b) Food stamps. DHS determines the food stamp eligibility of strikers according to requirements stipulated in 7 Code of Federal Regulations §273.1(g).

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 June 18, 1999.

TRD-9903655
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Chapter 12. Special Nutrition Programs

The Texas Department of Human Services (DHS) proposes amendments to §§12.2, 12.3, 12.5, 12.9, 12.11, 12.14, 12.15, 12.19, 12.24-12.26, 12.108, 12.121, 12.122, 12.209, 12.309, 12.402, 12.404, 12.405, 12.407, and 12.409, concerning definition of program terms, eligibility of contractors, application for program benefits-contractors, reporting and record retention, participant eligibility for free and reduced-price meals, meal requirements, reimbursement methodology, program reviews, sanctions and penalties, denials and terminations, appeals, fiscal action, and contractor participation requirements, in its Special Nutrition Programs chapter. The purpose of the amendments is to implement provisions of the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336), which was signed into effect on October 31, 1998, including incorporation of the Child and Adult Care Food Program (CACFP) At Risk Afterschool program and the National School Lunch Program (NSLP) Afterschool Care Snack program, implementation of requirements relating to a single agreement and claim for special nutrition programs, restrictions on certain applicants in the CACFP relating to "moving towards tax-exempt status," and mandatory preapproval visits of new CACFP contractors, as well as periodic visits of contractors determined to be at risk of program noncompliance.

The CACFP At Risk Afterschool program and the NSLP Afterschool Care Snack program provide for a meal supplement (snack) served to individuals through age 18 years participating in certain after school programs to be claimed for reimbursement through the CACFP and NSLP. There is no age restriction for claiming reimbursement for snacks served to individuals who have been determined to be mentally or physically disabled and who participate in a program organized to provide after school care. The after school program must be organized to provide care after school hours with regularly scheduled activities in a structured and supervised setting primarily to low-income children, and must have an educational or enrichment purpose. Contractors in the CACFP At Risk Afterschool program may be reimbursed for snacks served to children on weekends and holidays during the regular school year. School food authorities in the NSLP Afterschool Care Snack program may not be reimbursed for snacks served to children on weekends and holidays during the regular school year. Organized athletic programs engaged in interscholastic or community level competitive sports including, but not limited to, youth sports leagues such as baseball, football, community soccer leagues, and area swim teams are prohibited from participating in the programs. However, otherwise eligible after school programs that include supervised athletic activity may participate in the CACFP At Risk Afterschool program or the NSLP Afterschool Care Snack program provided that the programs are open to all and do not limit membership for reasons other than space or security or licensing requirements, if applicable.

The Act requires states that operate the NSLP or School Breakfast Program and any other United States Department of Agriculture (USDA) child nutrition program to establish a single agreement and claim for contractors that participate in more than one program. States must also conduct preapproval visits of new, non-governmental CACFP contractors, as well as periodic visits of non-governmental contractors determined to be at risk of program noncompliance. These visits are in addition to the administrative review requirements already required by federal regulations.

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 an expanded contractor base to provide after school programs for individuals through 18 years of age, which will contribute to the reduction in juvenile crime activities. The proposed amendments will also have the public benefit of improving the integrity and accountability of the programs. There will be no adverse economic effect on small businesses. Participation in the CACFP and NSLP is voluntary. The NSLP is limited to public or private nonprofit organizations, which do not meet the definition of a small business. 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 Keith N. Churchill at (512) 467-5837 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-212, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Child and Adult Care Food Program

40 TAC §§12.2, 12.3, 12.5, 12.9, 12.11, 12.14, 12.15, 12.19, 12.24–12.26

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and §§33.001-32.024 of the Human Resources Code.

§12.2. Definitions of Program Terms.

Terms used in the administration and operation of the Child and Adult Care Food Program (CACFP) in Texas are defined in 7 Code of Federal Regulations §226.2 and 7 Code of Federal Regulations Parts 3015 and 3016, and appropriate Office of Management and Budget Circulars, except as defined in paragraphs (1)-(5) of this section:

(1) (No change.)

[~~(2) Contract period - the beginning date through the ending date specified in the original contract, or earlier if the contract is terminated before the end of the contract period. The Texas Department of Human Services considers extensions as separate contract periods.~~]

(2) [~~(3)~~] Expansion funds - funds made available to a contractor that has sponsored the participation of day care homes for at least one year at the time of application for expansion funds to expand the participation of the CACFP in day care homes located in low-income and/or rural areas, and to assist potential day care home providers who are unlicensed or unregistered to become licensed or registered.

(3)[~~(4)~~] Low-income area - local area where at least 50% of the area children are eligible for free or reduced-price school meals under the National School Lunch Program, as determined:

(A) by the number of free and reduced-price lunches or breakfasts served to children attending public and nonprofit private schools located in areas where there are CACFP sites,

(B) by information provided from departments or agencies that shows the family size and income of families in specific geographical boundaries, or

(C) from other appropriate sources.

(4) Participant - for the purpose of determining eligibility for participation in the At Risk Afterschool program of the Child and Adult Care Food Program, the term "participant" as defined in 7 Code of Federal Regulations, §226.2 is expanded to include:

(A) individuals through 18 years of age;

(B) individuals who turn 19 years of age during the regular school year; and

(C) individuals who have been determined to be mentally or physically disabled, regardless of age.

(5) (No change.)

§12.3. Eligibility of Contractors, Facilities, and Food Service Management Companies.

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

(c) Facilities, except participants in the CACFP At Risk Afterschool program not subject to state licensing requirements, must be licensed or otherwise approved by federal, state, or local authorities to provide child care. CACFP At Risk Afterschool programs that are not subject to state licensing requirements must provide documentation from the Texas Department of Protective and Regulatory Services (TDPRS) to show that they are not subject to state licensing requirements. Adult day care centers must be licensed by DHS or the Texas Department of Mental Health and Mental Retardation (TxMHMR), except that receipt of Title XIX funds (Medicaid) constitutes approval for program participation. Child care centers must be licensed or registered by TDPRS [~~DHS~~]. General Exception: Facilities operated by federal and Indian tribal governments are not required to be licensed or otherwise approved by DHS or TxMHMR.

(d)-(f) (No change.)

(g) DHS requires contractors to submit as proof of eligibility one or more of the following forms of documentation of tax-exempt status:

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

(3) letter from the IRS acknowledging acceptance of the contractor's application for tax-exempt status under the Internal Revenue Code of 1954. Organizations approved to participate in the CACFP on the basis of IRS acknowledgment of application for tax-exempt status are eligible to participate in the program, if otherwise eligible, for a period of 180 days from the date of acceptance by the IRS of the organization's application. An organization that is unable to obtain documentation of tax-exempt status within 180 days may request a one- time extension of 90 days to obtain the documentation. DHS will grant a one-time extension upon receipt from the organization of documentation provided by the IRS that the organization has complied with all requests for information pursuant to the establishment of tax-exempt status. An organization that is unable to obtain documentation of tax-exempt status within the prescribed deadline(s) will be ineligible to participate in the CACFP immediately upon expiration of the deadline(s) and will not be eligible to apply to participate in the program until a determination of tax-exempt status has been made in writing by the IRS.

(h)-(n) (No change.)

(o) To be eligible to participate in the CACFP At Risk Afterschool program, contractors and facilities must:

(1) be an organization eligible to participate in the CACFP in accordance with this chapter;

(2) operate an after school program which:

(A) provides individuals with regularly scheduled activities in an organized, structured, and supervised environment, including weekends and holidays during the regular school year;

(B) includes educational or enrichment activities;

(C) is located in a geographical area served by a school in which 50% or more of the children enrolled are eligible for free or reduced price school meals; and

(D) is not comprised of an organized athletic program engaged in interscholastic or community level competitive sports including, but not limited to, youth sports leagues. After school programs that include supervised athletic activity are allowed in the CACFP At Risk Afterschool program provided the programs are open to all and do not limit membership for reasons other than space or security or licensing requirements, if applicable; and

(3) meet state or local licensing requirements as applicable, or otherwise meet state or local health and safety standards.

§12.5. Application for Program Benefits - Contractors.

(a)-(d) (No change.)

(e) DHS conducts a pre-approval visit of contractors who are private nonprofit or private for-profit organizations who apply to participate in the CACFP in order to determine that the contractor demonstrates the capability of successfully operating the CACFP in accordance with the requirements of 7 Code of Federal Regulations 226 and this chapter.

(f)[~~(e)~~] If a contractor's application for participation is incomplete, DHS will deny the application if the requested additional information is not submitted to DHS within 30 days of the date of the written request. The contractor may reapply when all required information and documentation is available.

(g) [~~(f)~~] To be eligible for start-up funds or expansion funds, contractors that sponsor day care homes must submit an application. DHS approves or denies applications for start-up and expansion funds

according to 7 Code of Federal Regulations §§226.6, 226.12, 226.15, 226.16, and 226.23.

(1) Start-up funds are available only to sponsors of day care homes or contractors that are attempting to add day care homes to their operation, and to assist potential day care home providers who are unlicensed or unregistered to become licensed or registered.

(2) Expansion funds are available only to contractors that have sponsored day care homes for at least one year at the time of application and may be used only to expand program operations in low-income and/or rural areas, and to assist potential day care home providers who are unlicensed or unregistered to become licensed or registered. DHS considers the anticipated amount of expansion funds and alternate sources of funds when evaluating an applicant sponsor's plan for expansion. Contractors that are eligible to receive expansion funds may receive expansion funds only once in any 12-month period and one time only for an expansion effort in any geographic area. Applications for expansion funds must include:

(A) an acceptable and realistic plan for recruiting day care homes to participate in the program, including activities which the sponsoring organization will undertake;

(B) the amount of expansion funds needed and a budget detailing the costs the organization will incur, document, and claim;

(C) the time necessary for the expansion of program operations; and

(D) documentation that the expansion area meets the definition of a rural or low-income area.

§12.9. Reporting and Record Retention.

(a) (No change.)

(b) Contractors must keep records and documents pertaining to the CACFP for at least three years and 90 days after the termination of the program fiscal year [~~contract period~~]. If any litigation, claim, audit, or investigation involving these records begins before the stipulated time period expires, the contractor must keep the records and documents for not less than three years and 90 days after the termination of the program fiscal year [~~contract period~~] and until all litigation, claims, audits, or investigation findings are resolved. DHS considers the case resolved when a final order is issued in litigation or a written agreement is signed between DHS and the sponsoring organization.

(c)-(h) (No change.)

§12.11. Participant Eligibility for Free and Reduced-price Meals.

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

(d) Contractors approved to operate the Child and Adult Care Food Program (CACFP) At Risk Afterschool program must provide an after school supplement (snack) free of charge to all eligible participants attending an after school program in accordance with the at risk component of the program.

§12.14. Meal Requirements.

(a) Contractors must ensure that all program meals served and claimed for reimbursement, including after school snacks served in after school programs approved to operate the Child and Adult Care Food Program (CACFP) At Risk Afterschool program, fulfill the requirements of 7 Code of Federal Regulations §§226.2, 226.6, 226.13, 226.15-226.20, and 226, Appendix A, Alternate Foods for Meals, including meals purchased from a food service management company.

(b)-(d) (No change.)

§12.15. Reimbursement Methodology.

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

(c) Contractors approved to operate the Child and Adult Care Food Program (CACFP) At Risk Afterschool program may submit a claim for reimbursement for one snack per child per day for all eligible after school snacks served to eligible program participants. DHS reimburses contractors for eligible snacks at the free rate of reimbursement.

(d) Contractors are not eligible to be reimbursed for after school snacks served to participants in an approved At Risk After-school program if the participants have already received the maximum number of reimbursable meals under the CACFP (two meals and one supplement, or two supplements and one meal per child per day).

(e)[~~(c)~~] To be eligible for reimbursement, contractors must ensure that claims for reimbursement are postmarked or received by DHS no later than 60 days after the end of the claim month. Persons who sign the DHS certificate of authority form as the authorized representative of the contractor must sign claims.

(f)[~~(d)~~] DHS may not pay claims postmarked or received by DHS later than 60 days after the end of the claim month, unless the United States Department of Agriculture (USDA) determines that the submission of the late claim is the result of good cause beyond the contractor's control. For claims postmarked or received by DHS later than 60 days after the end of the claim month, DHS will notify the contractor that they may submit a written request for payment which demonstrates that the claim was submitted late for good cause beyond the control of the contractor. If DHS does not agree that good cause beyond the control of the contractor exists for the submission of a claim later than 60 days after the end of the claim month, DHS will notify the contractor that the request for payment will not be forwarded to USDA for consideration. If DHS agrees that the claim was submitted late for good cause beyond the control of the contractor, DHS will forward the request for payment to USDA with a recommendation that the claim be paid. If USDA determines that good cause exists, DHS may pay the claim. If USDA determines that good cause beyond the control of the contractor does not exist or if the contractor chooses not to submit a request for payment of a late claim demonstrating that good cause beyond his control exists, DHS may grant an exception and pay a claim postmarked or received by DHS later than 60 days after the end of the claim period provided that the contractor:

(1) requests an exception in writing; and

(2) has not been granted an exception in the 36 months preceding the month for which a request for an exception is submitted.

(g)[~~(e)~~] Contractors serve and claim second meals for reimbursement according to 7 Code of Federal Regulations §226.20(j). Contractors that serve meals family style are not eligible for reimbursement for second meals.

(h) [~~(f)~~] Day home providers may not claim Child and Adult Care Food Program (CACFP) reimbursement for meals served to another day home provider's own children at any time when both day home providers are participating in the CACFP. The "providers' own child" of one day home provider may be considered a "nonresidential child" for the purpose of claiming reimbursement for a meal service at the day home of another provider only if the criteria in paragraphs (1) and (2) are met:

(1) the children are enrolled for child care at the substitute facility; and

(2) the provider for whom substitute care is being provided does not claim reimbursement for any meals served during the period of substitute care.

(i)[~~(g)~~] Contractors that sponsor child and adult care centers may not include in a claim for reimbursement any meals:

(1) purchased from a food service management company (FSMC) that is not registered with DHS on or before the date of the meal service; or

(2) prepared at an unapproved food preparation facility operated by a registered FSMC.

§12.19. Program Reviews.

(a) (No change.)

(b) DHS will conduct periodic visits to private nonprofit and private for-profit contractors participating in the Child and Adult Care Food Program (CACFP) who have been determined by DHS through the program review process and technical assistance sessions to have demonstrated potential for noncompliance with program requirements. [~~Contractors that sponsor day homes conduct their reviews of day home providers according to 7 Code of Federal Regulations §226.16 and this chapter.~~]

(c) Each fiscal year, DHS will select by random sample at least 10% of the providers of each sponsor participating in the CACFP. Each contractor that sponsors day care homes must verify that the children for which meals are being claimed for reimbursement are enrolled for and receiving child care services and participating in the program. For each provider selected, the sponsor must contact the family of each child reported as enrolled for child care and participating in the program, excluding the day care home provider, during a test period established by DHS. Nothing in this chapter shall prohibit a contractor from verifying the participation of children in day care homes not randomly selected for verification by DHS or from conducting additional verification of participation in homes randomly selected by DHS. [~~Day home sponsoring organizations must conduct at least three monitoring reviews of each of their day care homes each 12 months. A meal service must be observed during each of the reviews. Each review of each provider must be conducted without prior notice (unannounced). An unannounced follow-up review must be made no more than two weeks after a review at which the sponsor is unable to confirm program participation.~~]

(d) Contractors that sponsor day homes conduct their reviews of day home providers according to 7 Code of Federal Regulations §226.16 and this chapter. [~~Each fiscal year, DHS will select by random sample at least 10% of the providers of each sponsor participating in the CACFP. Each contractor that sponsors day care homes must verify that the children for which meals are being claimed for reimbursement are enrolled for and receiving child care services and participating in the program. For each provider selected, the sponsor must contact the family of each child reported as enrolled for child care and participating in the program, excluding the day care home provider, during a test period established by DHS. Nothing in this chapter shall prohibit a contractor from verifying the participation of children in day care homes not randomly selected for verification by DHS or from conducting additional verification of participation in homes randomly selected by DHS.~~]

(e) Day home sponsoring organizations must conduct at least three monitoring reviews of each of their day care homes each 12 months. A meal service must be observed during each of the reviews. Each review of each provider must be conducted without prior notice (unannounced). An unannounced follow-up review must be made no more than two weeks after a review at which the sponsor is unable to confirm program participation. [~~Day home sponsoring organizations must ensure that at least one of their three monitoring reviews of day home providers participating on weekends is conducted on Saturday or Sunday.~~]

(f) Day home sponsoring organizations must ensure that at least one of their three monitoring reviews of day home providers participating on weekends is conducted on Saturday or Sunday.

(g) [~~(f)~~] Contractors that sponsor the participation of child and adult care centers must:

(1) conduct a preapproval visit to each food preparation site and the administrative offices of the food service management company (FSMC) prior to awarding a contract for food service;

(2) review the FSMC, including each food preparation site and administrative offices, at least three times per contract period. The first review must occur within the first six weeks of the beginning of the program year, and no more than six months can pass between reviews. If a food service contract is executed after the beginning of the contract period, the contractor may adjust the number of reviews based on the number of months remaining in the contract period;

(3) review the FSMC meal preparation and delivery system, including but not limited to sanitation and food preparation practices, transportation of food, record keeping, and compliance with state and local health requirements;

(4) maintain written verification of monitoring visits, including the date of the visit and all findings; and

(5) require the FSMC to take appropriate action to correct all deficiencies discovered during the review within a reasonable amount of time. If the health and well being of program participants are at risk as a result of program deficiencies identified during a FSMC review, the contractor may immediately terminate the contract for cause.

§12.24. Sanctions and Penalties.

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

(c) If DHS has evidence that a contractor has submitted false information, DHS will immediately suspend all program payments, including advance payments, until DHS can determine whether the contractor knowingly submitted false information. If DHS determines, after a review of information provided by the contractor or other sources, that the contractor has knowingly submitted false information, DHS will immediately declare the contractor seriously deficient, terminate the contractor's agreement, in whole or in part, suspend payment of any unpaid claim for reimbursement, and notify the contractor's eligible providers that they may transfer to another approved sponsor.

(d) If a contractor fails to attend training designated by DHS as mandatory, DHS will immediately declare the contractor seriously deficient and terminate the contractor's agreement, in whole or in part. DHS will deny payment of any administrative costs claimed for reimbursement beginning with the first month after the month in which the contractor failed to attend the required training. DHS will notify the contractor's eligible providers that they may transfer to another approved sponsor.

(e) DHS imposes sanctions against contractors that sponsor day care homes who fail to comply with program requirements for monitoring, and who fail to train providers when program violations related to monitoring or training of 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:

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

(3) DHS will conduct a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow- up review to determine if the sponsor is in compliance with the requirements in this subsection. DHS will notify the contractor that failure to correct all instances of noncompliance with the requirements in this subsection will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination,~~] declaration that the organization is seriously deficient in its administration of the program, forfeiture of any outstanding claims for reimbursement, release of the contractor's eligible providers to transfer to another approved sponsor, and that individuals responsible for the deficiencies will be debarred.

(f) DHS imposes sanctions against contractors that sponsor day care homes who fail to ensure that claims are submitted only for eligible meals served to eligible children according to the following procedure:

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

(3) If more than 10% of the meals sampled for the test month of the follow-up review fail to meet program requirements, DHS will conduct a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor is in compliance with requirements for ensuring claims are submitted only for eligible meals served to eligible children. DHS will notify the contractor that failure to correct all instances of noncompliance with requirements for ensuring claims are submitted only for eligible meals served to eligible children will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination,~~] declaration that the organization is seriously deficient in its administration of the program, forfeiture of any outstanding claims for reimbursement, release of the contractor's eligible providers to transfer to another approved sponsor, and that individuals responsible for the deficiencies will be debarred.

(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:

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

(3) DHS will conduct a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow- up review to determine if the sponsor is in compliance with the requirements identified in subsection (h) of this section. DHS will notify the contractor that failure to correct all instances of noncompliance relating to the disbursement of provider funds will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination,~~] declaration that the organization is seriously deficient in its administration of the program, forfeiture of any outstanding claims for reimbursement, release of the contractor's eligible providers to transfer to another approved sponsor, and that individuals responsible for the deficiencies will be debarred.

(h)-(j) (No change.)

(k) DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail to comply with the requirements of said Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination~~] and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two advance notices reminding the contractor of the specific date that the audit is due.

(i) (No change.)

(ii) DHS issues the second notice by certified and regular mail eight months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) (No change.)

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's agreement, in whole or in part, [~~contract~~] effective the first day of the month following the month in which the audit was due; and

(III) (No change.)

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their agreement [~~contract~~] was terminated, in whole or in part, effective the first day of the month following the month in which the audit was due.

(2) (No change.)

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

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

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the due date specified in this notification; and

(D) (No change.)

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) (No change.)

(B) DHS terminated their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the specified due date.

(5) Once a contractor's participation in the CACFP [~~contractor~~] has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the

Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

(l) (No change.)

§12.25. Denials and Terminations.

(a) The Texas Department of Human Services (DHS) denies applications for participation and terminates agreements, in whole or in part, between DHS and contractors for failure to meet basic eligibility requirements, and according to 7 Code of Federal Regulations §§226.6, 226.14-226.16, 226.18, 226.23, 226.25, and 7 Code of Federal Regulations Part 3015.

(b) DHS terminates agreements, in whole or in part, [~~contracts~~] and denies subsequent applications of sponsoring organization of day care homes who fail to submit reports in accordance with §12.9 of this title (relating to Reporting and Record Retention).

(c) DHS terminates agreements, in whole or in part, [~~contracts~~] and denies applications of contractors who have been determined to be seriously deficient in their administration of the program for failure to comply with program requirements as described in §§12.3, 12.5, 12.6, 12.20, and 12.24 of this title (relating to Eligibility of Contractors and Facilities, Application for Program Benefits-Contractors, Agreement, Training/Technical Assistance, and Sanctions and Penalties). DHS may approve an application and execute a contract with a contractor found to be seriously deficient for failure to comply with program requirements if such contractor demonstrates to the satisfaction of DHS that all serious deficiencies identified by DHS have been or will be corrected. DHS will establish a date by which the day care home sponsoring organization must submit an acceptable plan to correct the serious deficiencies identified by DHS. If a contractor fails to demonstrate by submission of an acceptable corrective action plan by the specified date that all serious deficiencies identified by DHS have been or will be corrected, DHS will notify the contractor that their agreement is terminated, in whole or in part, effective the last day of the month in which their corrective action plan was due and that DHS will deny payment of any claims for reimbursement after that date. [~~Exception: If DHS specifies a due date for the submittal of a corrective action plan which extends beyond the expiration date of the contractor's agreement, DHS will offer an extension to the agreement for a period not to exceed 180 days beyond the expiration date of the agreement unless terminated earlier for failure to comply with program requirements or submit an acceptable corrective action plan. DHS will determine the duration of the extension based on the amount of time needed to complete the corrective action process. If the contractor rejects the offer of extension, the agreement will expire on the original expiration date.~~]

(d) DHS denies applications for participation and terminates agreements, in whole or in part, with contractors sponsoring day homes for failure to submit a balanced and reasonable budget.

(e) (No change.)

(f) DHS denies applications and terminates agreements, in whole or in part, with contractors if they have permitted any individual identified in §12.3(h) of this title (relating to Eligibility of Contractors and Facilities) to enter the facility when children are present.

(g) DHS denies applications and terminates agreements, in whole or in part, with contractors if they have permitted any individual identified in 12.3(i) of this title (relating to Eligibility of Contractors and Facilities) to engage in any activity related to the administration of the CACFP.

(h) DHS terminates agreements, in whole or in part, with contractors that sponsor day care homes if they receive reimbursement for fewer than 50 day care homes for three consecutive months.

(i) DHS denies applications for participation and terminates agreements, in whole or in part, with contractors subject to the bonding requirement identified in §12.3(b) of this title (relating to Eligibility of Contractors and Facilities) if they fail to submit and maintain in good standing a performance bond in the amount established by DHS. DHS denies requests for relief from the bonding requirement if the contractor has an outstanding financial obligation to DHS.

(j)-(l) (No change.)

§12.26. Appeals.

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

(c) Contractors may appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim, as described in §12.15(f) [~~§12.15(d)~~] of this title (relating to Reimbursement Methodology). Contractors may not appeal a USDA decision that the late claim is ineligible for payment.

(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 June 17, 1999.

TRD-9903609
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Subchapter B. Summer Food Service Program

40 TAC §§12.108, 12.121, 12.122

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and §§33.001-32.024 of the Human Resources Code.

§12.108. Record Retention.

(a) Sponsors must keep financial and supporting documents, statistical records, and any other records of services for which the sponsor submits a claim for reimbursement in the manner and detail prescribed by DHS. The sponsor's staff must keep records and documents for at least three years and 90 days after the end of the program fiscal year [~~termination of the contract period~~]. If any litigation, claim, audit, or investigation involving these records begins before the stipulated time period expires, the sponsor must keep the records and documents for not less than three years and 90 days after the end of the program fiscal year [~~termination of the contract period~~] and until the litigation, claim, audit, or investigation findings are resolved. The DHS considers the case resolved when a final order is issued in litigation or a written agreement is signed by DHS and the sponsor. [~~Contract period means the beginning date through the ending date specified in the original contract, or earlier if the~~

~~contract is terminated before the end of the contract period. The DHS considers extensions to be separate contract periods.~~]

(b) (No change.)

§12.121. Sanctions and Penalties.

(a) (No change.)

(b) DHS imposes fiscal sanctions specified in this subsection on sponsors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail to comply with the requirements of the said Act. The sponsor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a sponsor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each sponsor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination~~] and recovery of overpayments as identified through audit findings.

(B) DHS provides the sponsor two advance notices reminding the sponsor of the specific date that the audit is due.

(i) (No change.)

(ii) DHS issues the second notice by certified and regular mail eight months after the end of the sponsor's fiscal year for which the audit is due. DHS notifies the sponsor that:

(I) (No change.)

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the sponsor's agreement, in whole or in part, [~~contract~~] effective the first day of the month following the month in which the audit was due; and

(III) (No change.)

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the sponsor by certified and regular mail that their agreement [~~contract~~] was terminated, in whole or in part, effective the first day of the month following the month in which the audit was due.

(2) (No change.)

(3) If a sponsor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the sponsor in writing that the audit is unacceptable, how it is unacceptable, and that the sponsor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the sponsor by certified and regular mail that:

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

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the due date specified in this notification; and

(D) (No change.)

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the sponsor by certified and regular mail that:

(A) (No change.)

(B) DHS terminated their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the specified due date.

(5) (No change.)

§12.122. Denials and Terminations.

The Texas Department of Human Services (DHS) denies applications for participation and terminates agreements, in whole or in part, between DHS and sponsors for failure to meet eligibility requirements and violation of the terms of the agreement according to 7 Code of Federal Regulations §§225.6, 225.11, and 225.18 and Part 3015.

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 June 17, 1999.

TRD-9903610
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Subchapter C. Special Milk Program

40 TAC §12.209

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-32.024 of the Human Resources Code.

§12.209. Fiscal Action.

(a) (No change.)

(b) DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail to comply with the requirements of said Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination~~] and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two advance notices reminding the contractor of the specific date that the audit is due.

(i) (No change.)

(ii) DHS issues the second notice by certified and regular mail eight months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) (No change.)

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's agreement, in whole or in part, [~~contract~~] effective the first day of the month following the month in which the audit was due; and

(III) (No change.)

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their agreement [~~contract~~] was terminated, in whole or in part, effective the first day of the month following the month in which the audit was due.

(2) (No change.)

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

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

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the due date specified in this notification; and

(D) (No change.)

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) (No change.)

(B) DHS terminated their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the specified due date.

(5) (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 June 17, 1999.

TRD-9903611
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Subchapter D. School Breakfast Program

40 TAC §12.309

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-32.024 of the Human Resources Code.

§12.309. Fiscal Action.

(a) (No change.)

(b) DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail to comply with the requirements of said Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination~~] and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two advance notices reminding the contractor of the specific date that the audit is due.

(i) (No change.)

(ii) DHS issues the second notice by certified and regular mail eight months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) (No change.)

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's agreement, in whole or in part, [~~contract~~] effective the first day of the month following the month in which the audit was due; and

(III) (No change.)

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their agreement [~~contract~~] was terminated, in whole or in part, effective the first day of the month following the month in which the audit was due.

(2) (No change.)

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

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

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the due date specified in this notification; and

(D) (No change.)

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) (No change.)

(B) DHS terminated their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the specified due date.

(5) (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 June 17, 1999.

TRD-9903612
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Subchapter E. National School Lunch Program

40 TAC §§12.402, 12.404, 12.405, 12.407, 12.409

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement §§22.001-22.030 and §§33.001-32.024 of the Human Resources Code.

§12.402. Definitions.

Definitions of words and terms used in the National School Lunch Program (NSLP) [~~NSLP~~] are those stipulated in 7 Code of Federal Regulations, §210.2 and §245.2, except that, for the purpose of participation in the Afterschool Care Snack program in the NSLP, the term "child" as defined in 7 Code of Federal Regulations, §210 is expanded to include individuals:

(1) through age 18 years for children, including children of migrant workers;

(2) who turn 19 during the school year; and

(3) who are determined to be mentally or physically disabled, regardless of age.

§12.404. Reimbursement.

(a) [~~Reimbursement rates are set by the Texas Department of Human Services (DHS) according to standards and procedures stipulated in 7 Code of Federal Regulations §210.7.~~] To the extent funds are made available to the Texas Department of Human Services (DHS) [~~DHS~~] by the Food and Nutrition Service (FNS), reimbursement payments are made to contractors according to the requirements stipulated in 7 Code of Federal Regulations, §210.7 and §210.8. Exception: DHS does not make advance payments.

(b) Reimbursement rates are set by DHS according to the standards and procedures stipulated in 7 Code of Federal Regulations, §210.7.

(c) Schools may claim reimbursement for one snack per child per day participating in an approved after school program. Reimbursement rates for snacks in an after school care program are determined as follows: If the after school site is located in an area served by a school where:

(1) 50% or more of the enrolled children are eligible for free or reduced price meals, all eligible snacks served are reimbursed at the free rate; or

(2) fewer than 50% of the enrolled children are eligible for free or reduced-price meals, the school must document the eligibility of participating children and claim reimbursement for snacks based on the eligibility category (free, reduced-price and paid) of program participants.

(d)[~~(b)~~] DHS does not pay claims postmarked or received by DHS later than 60 days after the end of the claim month, unless the United States Department of Agriculture (USDA) determines that the submission of the late claim is the result of good cause beyond the contractor's control. If USDA determines that good cause does not exist, DHS may grant an exception and pay a claim postmarked or received by DHS later than 60 days after the end of the claim period provided that the contractor:

(1) requests an exception in writing; and

(2) has not been granted an exception in the 36 months preceding the month for which a request for an exception is submitted.

(e)[~~(c)~~] Contractors may appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim, as described in subsection (d) [~~(b)~~] of this section. Contractors may not appeal a USDA decision that the late claim is ineligible for payment.

§12.405. Contractor Eligibility.

(a) To participate as a contractor in the National School Lunch Program (NSLP), a contractor must meet the definition of a school as stipulated in 7 Code of Federal Regulations, §210.2 and provide lunches to a child as defined in 7 Code of Federal Regulations, §210.2.

(b) (No change.)

(c) To be eligible to administer an Afterschool Care Snack program in the NSLP, a school food authority must operate the lunch component of the NSLP and retain final administrative and financial responsibility for the program. Afterschool Care Snack programs operated at facilities that are not subject to state licensing requirements must provide documentation from the Texas Department of Protective and Regulatory Services (TDPRS) to show that they are not subject to state licensing requirements.

§12.407. Contractor Participation Requirements.

To participate in the program, the contractor must:

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

(12) comply with hearing requirements stipulated in 7 Code of Federal Regulations, §245.7; and

(13) agree, if approved to operate an Afterschool Care Snack program, to sponsor or operate a program which:

(A) provides free snacks to all eligible children participating in an Afterschool Care Snack program operated in an area served by a school in which 50% or more of the enrolled children are eligible for free or reduced-price meals;

(B) charges no more than 15 cents per snack served to children eligible for reduced-price meals if operating a site located in an area served by a school in which fewer than 50% of the enrolled children are eligible for free or reduced-price meals;

(C) provides children with regularly scheduled activities in an organized, structured, and supervised environment after their school day has ended, excluding weekends and holidays;

(D) includes educational or enrichment activities;

(E) is not comprised of an organized athletic program engaged in interscholastic or community level competitive sports. Afterschool Care Snack programs that are "open to all" and do not limit membership for reasons other than space, security, or where

applicable, licensing requirements may include supervised athletic activities in their program; and

(F) meets state or local licensing requirements as applicable, or otherwise meets State or local health and safety standards.

§12.409. Fiscal Action.

(a) (No change.)

(b) DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination, in whole or in part, of the contractor's agreement, [~~contract termination~~] and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two advance notices reminding the contractor of the specific date that the audit is due.

(i) (No change.)

(ii) DHS issues the second notice by certified and regular mail eight months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) (No change.)

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's agreement, in whole or in part, [~~contract~~] effective the first day of the month following the month in which the audit was due; and

(III) (No change.)

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their agreement [~~contract~~] was terminated, in whole or in part, effective the first day of the month following the month in which the audit was due.

(2) (No change.)

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

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

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the due date specified in this notification; and

(D) (No change.)

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) (No change.)

(B) DHS terminated their agreement, in whole or in part, [~~contract~~] effective the first day of the month following the specified due date.

(5) (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 June 17, 1999.

TRD-9903613
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes amendments to §19.216, concerning license fees; §19.502, concerning transfer and discharge in Medicaid-certified facilities; §19.2004, concerning determinations and actions pursuant to inspections; §19.2112, concerning administrative penalties; and §19.2147, concerning informal dispute resolution, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to conform existing procedures to Health Care and Financing Administration (HCFA) directives, update the names of program areas that changed as the result of the Long Term Care - Regulatory (LTC-R) re-engineering, and clarify the procedures for ending a continuing violation that is subject to an administrative penalty.

Eric M. Bost, commissioner, has determined that for the first five- year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be ongoing protection of nursing home residents as the result of clarifying existing rules for the Nursing Facility Requirements for Licensure and Medicaid Certification. There will be no effect on small businesses because the proposed rule changes are editorial only and do not implement new policies or procedures. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Linda Williams at (512) 438-3167 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-108, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter C. Nursing Facility Licensure Application Process

40 TAC §19.216

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.037.

§19.216. License Fees.

(a) Basic fees.

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

(3) Change of administrator. A facility that hires a new administrator must notify the Texas Department of Human Services (DHS), Long Term Care-Regulatory, Facility Enrollment Section [~~in writing~~] not later than the 30th day after the date on which the change became [~~becomes~~] effective by submitting a change of administrator application and paying [~~pay~~] a $20 change of administrator fee to DHS.

(4) (No change.)

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

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

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

TRD-9903558
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter F. Admission, Transfer, and Discharge Rights in Medicaid-Certified Facilities

19 TAC §19.502

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§19.502. Transfer and Discharge in Medicaid-certified Facilities.

(a)-(d) (No change.)

(e) Timing of the notice.

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

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office LTC-R Customer Service [~~Quality Assurance Review and Investigations~~] Section of the Texas Department of Human Services (DHS) [~~Services' (DHS's) state office~~] to report their intention to discharge; and

(B) (No change.)

(f)-(j) (No change.)

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

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

TRD-9903559
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

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Subchapter U. Inspections, Surveys, and Visits

40 TAC §19.2004

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.037.

§19.2004. Determinations and Actions Pursuant to Inspections.

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

(c) Violations found during complaint investigations will be discussed with the facility management at the exit conference. If deficiencies are cited, a list of the deficiencies will be sent to the facility within 10 working days. The source of the complaint will not be revealed.

(d)-(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 June 15, 1999.

TRD-9903560
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

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Subchapter V. Enforcement

Division 2. Licensing Remedies

40 TAC §19.2112

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.037.

§19.2112. Administrative Penalties.

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

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DHS that the correction was not made by that date or was not satisfactory. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this title (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed $1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H, Quality of Life, or Subchapter J, Quality of Care. Figure: 40 TAC §19.2112(f)

(g)-(j) (No change.)

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

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

TRD-9903561
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

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Division 3. Remedies in Medicaid-Certified Facilities

40 TAC §19.2147

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042, and the Health and Safety Code, §242.037.

§19.2147. Informal Dispute Resolution.

The Texas Department of Human Services (DHS) provides an informal dispute resolution process (IDR) in the central office, as follows:

(1) A written request, [~~and~~] all supporting documentation, and registration information as required under paragraph (3) of this section, must be submitted to the Texas Department of Human Services, Long Term Care-Regulatory, ATTN: IDR Coordinator, [~~Texas Department of Human Services (DHS)~~], P.O. Box 149030 (MC-E-343 [~~Y-976~~]), Austin, TX 78714- 9030, no later than the 10th calendar day after receipt of the official statement of deficiencies.

(2) DHS will complete the IDR process no later than the 30th calendar day after receipt of the facility's written [~~a~~] request, [~~from a facility~~] all documentation, and required registration information.

(3) (No change.)

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

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

TRD-9903562
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

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Chapter 49. Contracting for Community Care Services

40 TAC §49.19

The Texas Department of Human Services (DHS) proposes an amendment to §49.19, concerning sanctions, in its Contracting for Community Care Services chapter. The purpose of the amendment is to clarify rules concerning the application and release of vendor hold for Community Care providers. The amendment adds restitution and recoupment as grounds for placing a provider on vendor hold and deletes contract termination as an automatic reason for placing a provider on vendor hold. The amendment also adds provisions for placing providers on vendor hold for outstanding overpayments or audit exceptions and recoupment of overpayments from outstanding claims. The amendment specifies that DHS releases vendor hold when outstanding overpayments from the provider agency are recouped and clarifies that providers may appeal any adverse action against their contract, not just contract termination.

Eric M. Bost, commissioner, has determined that for the first five- year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more accountability to the public, by providers, regarding recoupment of money owed to the state. There will be no effect on small businesses. This rule does not apply to providers that operate according to program requirements. Furthermore, vendor hold is only a temporary hold until the contract issues are resolved. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Marilyn Eaton at (512) 438-3136 in DHS's Community

Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-196, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, Chapters 22 and 32, and Government Code, §531.021.

§49.19. Sanctions.

(a) (No change.)

(b) Sanctions may include one or more of the following at the discretion of DHS:

(1) Hold on client referrals. DHS may place [~~places~~] a hold on client referrals for reasons including, but not limited to:

(A) DHS determines [~~the~~] client [~~client's~~] health and safety is jeopardized by the agency's failure to comply with the terms of the contract/program requirements [~~provide services~~];

(B) the provider agency fails to comply with their [~~its~~] corrective action plan;

(C) the provider agency [~~is potentially terminated or~~] receives notice of contract termination or is appealing contract termination;

(D) the provider agency fails to provide services according to contract/program requirements; or

(E) the provider agency is on vendor hold.[~~; or~~]

[~~(F) a contract termination is being appealed.~~]

(2) Vendor hold.

(A) DHS may place [~~places~~] a vendor hold (withholding a provider agency's payment) upon one or all of a provider agency's contracts with DHS for reasons including, but not limited to:

[~~(i) contract termination, whether voluntary or involuntary;~~]

(i) [~~*(ii)*~~] the provider agency's failure to follow an [~~the~~] agreed upon audit resolution payment plan;

(ii) the provider agency's failure to submit an acceptable cost report;

[~~(iii) failure to comply with licensure requirements, if applicable;~~]

(iii) [~~*(iv)*~~] the provider agency's failure to provide services according to contract/program requirements;

(iv) the provider agency's failure to comply with their corrective action plan;

(v) the expiration of any required license; [~~or~~]

(vi) DHS's recoupment of overpayments to a provider agency and restitution of audit exceptions assessed against a provider agency; or

[~~(vi) monetary penalties assessed by DHS, if allowed by program rules, which have not been appealed or which have been appealed and have been sustained by a final decision.~~]

(vii) DHS's determination that client health and safety is jeopardized by the provider agency's failure to comply with the terms of the contract and/or program requirements.

(B) DHS may accept an irrevocable letter of credit, in a format and an amount approved by DHS, to allow the release of all or a portion of vendor payments on hold. Vendor holds are released after resolution of all outstanding audits and/or after complete resolution of the reason cited for vendor hold [~~any contract compliance issues~~].

(3) Contract termination. DHS may initiate contract termination for one or more reasons including, but not limited to[~~, the provider agency's~~]:

(A) the provider agency's failure to comply with the terms of the contract[~~/rule;~~], rules, and/or program requirements;

(B) the provider agency's failure to maintain a current required license;

(C) [~~gross failure to ensure a client's health and safety~~] DHS's determination that client health and safety is jeopardized by the agency's failure to comply with the terms of the contract and/or program requirements;

(D) the provider agency's failure to comply with corrective action plans;

(E) the provider agency's exclusion from contracting for Title XVIII or XIX of the Social Security Act services;

(F) the provider agency's failure to submit an acceptable cost report by the due date;

(G) the provider agency having validated report(s) of abuse, neglect, or exploitation when the perpetrator is an employee, volunteer, or owner who has or will have access to clients served through this contract; or

(H) the provider agency's knowing [~~knowingly~~] and willful [~~willfully~~] solicitation [~~soliciting~~] of clients from another provider agency.

(c) If the agency has [~~an~~] outstanding overpayments or audit exceptions [~~exception~~] upon termination of a contract, DHS can place vendor hold upon one or all of the provider agency's contracts with DHS and take the balance owed from outstanding claims submitted.

(d) The provider agency has the right to appeal any adverse action against their contract, including contract termination, by filing a written request for a hearing so that DHS receives the request [~~it~~] within 15 calendar days after the provider agency receives DHS's written notification of adverse action [~~termination letter~~].

(1) When a contract is involuntarily terminated by DHS, clients may be transferred to another provider, even if appealed. [~~If~~

~~appealed,~~ ~~DHS~~ ~~can give~~ ~~clients~~ ~~a choice of returning to the provider agency.~~]

(2) (No change.)

(3) If [~~DHS upholds~~] the appeal decision sustains DHS's action, [~~to terminate, DHS terminates~~] the contract termination remains in effect.

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 June 15, 1999.

TRD-9903563
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Part IX. Texas Department on Aging

Chapter 260. Area Agency on Aging Administration Requirements

40 TAC §260.11

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

The Texas Department on Aging proposes the repeal of existing §260.11 and proposes a new §260.11 relating to Ombudsman Services. The section proposed for repeal has been substantially revised and will be superseded by the proposed new section if adopted. The purpose of this new rule is to ensure the operation of a program which advocates for the rights of residents to receive the highest quality of care in long-term care facilities.

The proposed new section outlines the responsibilities of contractors to operate regional ombudsman programs. The new rule as proposed includes a new section of definitions that will clarify the terms specific to this chapter and establishes volunteer management requirements, professional staff ratios, and advocacy plan requirements.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the repeal and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Pennington, however, has determined that for each year of the first five years the new rule is in effect, additional costs may be incurred by local Ombudsman programs to hire additional professional Ombudsman staff to meet the ratio requirement of one professional full-time-equivalent (FTE) staff to each 2,000 licensed nursing facility beds. The actual amount of any additional costs can be determined by each Ombudsman program by calculating the number of additional professional staff necessary to meet the ratio requirement and multiplying that times the prevailing salary for the necessary staff, fringe benefits costs, and overhead costs associated with any new staff. The public benefit anticipated as a result of adopting the repeal and proposed new rule will be an increase in the number of professional Ombudsman staff statewide available to assist and support volunteer Ombudsman staff in ensuring quality advocacy on behalf of nursing home residents and a better understanding of the rules governing the local Ombudsman program by incorporating new language and simplifying previous language. There will be no effect on small businesses.

Comments on the repeal and the new rule may be submitted to John Willis, State Ombudsman, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeal is proposed under the Human Resources Code, §101.021, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§260.11. Ombudsman Services.

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 June 15, 1999.

TRD-9903574
Mary Sapp
Executive Director
Texas Department on Aging
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 424–6872

♦ ♦ ♦

The new section is proposed under the Human Resources Code, §101.021, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§260.11. Ombudsman Services.

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

(1) Advocacy - Actions by or on the behalf of individuals and/or groups to ensure that they receive the benefits and services to which they may be entitled, and to ensure that their rights guaranteed by law are protected and enforced.

(2) Advocacy plan - An action plan developed to address the needs and quality of care issues of residents that are developed at the state, regional and individual nursing facility levels.

(3) Certified volunteer ombudsman - An individual who has been recommended by a regional program and approved by the State Long-Term Care Ombudsman to serve as an advocate for long-term care facility residents and participate in the ombudsman program. A certified volunteer shall have successfully completed an internship, or equivalent experience as determined by the Office, and have completed required initial certification training prior to engaging

in independent complaint resolution. A certified volunteer shall be a representative of the Office.

(4) Clients or recipients of services - Persons who reside in long-term care facilities.

(5) Contractor - The performing agency in a contract with the Department. The word contractor when used in this rule and related policies and procedures is synonymous with grantee or other entities as defined by the Board on Aging, Texas Department on Aging.

(6) Conflict of interest - Status of an individual applying to be a certified volunteer ombudsman must be revealed to the Office of the State Long-Term Care Ombudsman and resolved prior to service. A conflict of interest exists if an individual applying to be a certified volunteer ombudsman or an immediate family member of that individual has any one or more of the following:

(A) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(B) ownership or direct investment interest in a long-term care service;

(C) employed by or participates in the management of a long-term care facility;

(D) receives or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a long-term care facility; or

(E) has a family member residing in a long-term care facility in which the representative is assigned or provides advocacy.

(7) Department - The Texas Department on Aging, the single state agency for Older Americans Act programs.

(8) Facility coverage - The regional ombudsman program has a visible and active presence in the nursing facility sufficient for residents and families to have access to ombudsman services that result in the timely identification and resolution of complaints and concerns. The regional ombudsman program may establish affiliations with other volunteer groups to exchange information and identify advocacy needs to support facility coverage.

(9) Friends & Family Visitor - A volunteer who has a relationship with the regional ombudsman program but who does not participate in complaint resolution. A Friends & Family Visitor receives orientation and training as prescribed by the Office but does not receive certification.

(10) In-service - A planned educational effort conducted or coordinated by professional staff or certified volunteers.

(11) Long-term care facility - A facility that is licensed or regulated or that is required to be licensed or regulated by the Texas Department of Human Services.

(12) Office - The Office of the State Long-Term Care Ombudsman, an independent division of the Texas Department on Aging.

(13) Ombudsman intern - A volunteer who has been admitted to the regional training program as a potential certified volunteer ombudsman.

(14) Professional - Refers to an individual who has obtained a four-year bachelors degree in aging related areas or human services, or has equivalent qualifying experience as a substitute for a degree. Such substitution shall be consistent with the employing entity's personnel policies.

(15) Regional ombudsman - The professional staff person at the regional level who directs the ombudsman program. The regional ombudsman program shall appoint the regional ombudsman who shall meet the requirements of a professional. Two years of direct services to the elderly or experience in ombudsman, advocacy, dispute resolution, or volunteer management are preferred. The regional ombudsman and other staff of the regional ombudsman program shall be representatives of the Office and under state law shall be granted access to long-term care facility resident records.

(16) Regional ombudsman program - An area agency on aging or other entity, as defined by the Board on Aging, Texas Department on Aging, which is responsible for implementation of all aspects of the regional ombudsman program as defined in these rules.

(17) Request for Proposal (RFP) - A process approved by the Board on Aging, Texas Department on Aging, through which the regional ombudsman program will be contracted to an entity other than the area agency on aging for that region.

(18) State Long-Term Care Ombudsman - The person designated by the Executive Director, Texas Department on Aging, as Chief Administrator of the Office of the State Long-Term Care Ombudsman. The state ombudsman is accountable to the Executive Director, Texas Department on Aging, for program and personnel matters.

(b) Legal Authority.

(1) Ombudsman Rules are promulgated under the authority of Human Resources Code, Chapter 101, and the Older Americans Act of 1965, Chapter VII, as amended.

(2) The Board on Aging of the Texas Department on Aging, shall make policy decisions regarding these rules and define service priorities, which shall include advocacy in long-term care facilities licensed by the Texas Department of Human Services or facilities providing care that should be licensed by the Texas Department of Human Services.

(c) Purpose. The purpose of this rule is to assure the development and operation of a program which advocates for the rights of residents and their families to receive the highest quality of care in long-term care facilities.

(d) Philosophy.

(1) Persons who are unable to care for themselves are entitled to dependable and consistent care that includes:

(A) a safe and healthy environment;

(B) satisfaction of nutritional needs;

(C) medical services, including physical, mental and psychosocial rehabilitation;

(D) an environment that promotes and maintains the individual's dignity, self determination, communication and protection of individual rights.

(e) Eligibility. Residents of long-term care facilities aged 60 and above are eligible for Ombudsman services. Residents who are under 60 years of age and require advocacy services may be served if the advocacy effort benefits 60-year-old and older residents.

(f) Responsibilities of contractors to operate regional ombudsman programs. Contractors shall be either an area agency on

aging or an entity selected through a request-for-proposal process. The regional ombudsman program shall:

(1) be an organization with a responsive and visible presence in its region. It shall:

(A) be an expert and reliable source of information for families seeking information on long-term care placement or general requests for assistance;

(B) have a visible and active presence in the nursing facility sufficient for clients and families to have access to ombudsman services that promote or improve quality of care and that result in the timely identification and resolution of complaints and concerns;

(C) coordinate with state, regional and local agencies and be recognized as an active member in the continuum of care in the communities it serves;

(D) have a mutually positive referral relationship with the Texas Department of Human Services and the Texas Department of Protective and Regulatory Services; and

(E) be a catalyst for community involvement in long-term care facilities and be viewed as a credible source of information for the community, the regulatory system, and the nursing home industry;

(2) have adequate staff not less than a ratio of one professional FTE staff who is involved in the day-to-day operation of the ombudsman program to each 2,000 licensed nursing facility beds in the region to manage all aspects of the program and shall designate a professional staff person as the regional ombudsman. The regional ombudsman program shall be a subdivision of the Office. The regional ombudsman and other staff of the regional ombudsman program under federal authority shall be representatives of the Office;

(3) establish and maintain a complaint management system that includes as a minimum:

(A) obtain or provide training to interns and certified ombudsmen on handling complaints and dispute resolution;

(B) have an intake process for receiving complaints;

(C) have a written process for certified volunteer ombudsmen to identify and investigate complaints and concerns with referral to regional ombudsmen when assistance is needed;

(D) have a written process for resolving complaints to the complainant's satisfaction; and

(E) have a process for reporting complaint activity as required by the regional ombudsman program and the Office;

(4) establish a process to identify and remove conflicts of interest as prescribed in procedures established by the Office;

(5) establish and maintain a volunteer management system in which the regional program shall:

(A) analyze the number of volunteers needed for administrative duties, other activities, or facility coverage with the goal of at least one certified ombudsman per nursing facility, but not less than the ratio of certified ombudsmen to licensed nursing facility beds as prescribed by the Legislative Budget Board of the Texas Legislature;

(B) recruit individuals to become certified volunteer ombudsmen using all appropriate means and conduct appropriate follow-up with individuals who expressed interest;

(C) process applicants through the completion of an application that contains all minimum information required by the Office. Place volunteers as Friends & Family Visitors or other administrative support or process through completion of certification training and internship; make recommendation for certification of individuals to the State LTC Ombudsman and assign certified ombudsmen to appropriate long-term care facilities;

(D) provide state-approved initial certification training and provide 12 hours of regional continuing education each federal fiscal year, for each representative of the Office;

(E) provide state-approved orientation and training for Friends & Family Visitors

(F) support and supervise volunteers during their service;

(G) promote volunteer retention through regular communication, recognition, motivational activities, and feedback of satisfaction with program services;

(H) establish and use a volunteer grievance and complaint system; and

(I) develop exit procedures to include input from the volunteers and notification to the Office of inactive status with comments from volunteer and staff ombudsman

(6) assure that residents, families, and complainants have access to ombudsman services during the normal business week with no cost through toll-free number or acceptance of collect calls with initiation of action within twenty-four hours. The ombudsman telephone number shall be listed under the area agency on aging listing in accordance with current Department policy;

(7) support the formation of family and resident councils in each facility of the region, in an effort to provide advocacy resources to promote quality of care;

(8) provide informational resources relating to quality of care to residents, family, and staff of each nursing facility in the region. Be available to provide in-service training in long-term care facilities in the region. Such in-service training may be conducted by certified volunteers or staff ombudsmen;

(9) coordinate with regional administrators or their designees of the Texas Department of Human Services Long-Term Care Regulatory serving the region at least quarterly and the Texas Department of Protective and Regulatory as needed to develop efficient referral, communication, and problem-solving procedures;

(10) participate in survey activities with the Texas Department of Human Services in accordance with the cooperative agreement between the Department and the Texas Department of Human Services;

(11) submit program performance and other reports in accordance with requirements established by the Office and the Department

(12) develop and implement individual nursing facility advocacy plans followed by development and implementation of a regional advocacy plan that is based on an analysis of individual nursing facility advocacy plans and other sources of information and that supports the achievement of the highest levels of quality of care and quality of life for residents;

(13) promote local awareness of the ombudsman program through the frequent use of local and regional resources, including the media, in order to provide visibility to the program; and

(14) encourage the coordination with citizen, membership and advocacy organizations to support quality of care and increase community involvement with and awareness of long-term care services.

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 June 15, 1999.

TRD-9903575
Mary Sapp
Executive Director
Texas Department on Aging
Earliest possible date of adoption: August 1, 1999
For further information, please call: (512) 424–6872

WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement-Specific Substantive Rules

22 TAC §203.15

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Funeral Service Commission has been automatically withdrawn. The amended section as proposed appeared in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12853).

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903703

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

The Office of the Governor adopts amendments to §§3.5, 3.115, 3.130, 3.140, 3.150, 3.180, 3.215, 3.230, 3.235, 3.240, 3.250, 3.280, 3.305, 3.315, 3.340, 3.350, 3.380, 3.405, 3.410, 3.415, 3.430, 3.440, 3.450, 3.480, 3.500, 3.505, 3.510, 3.515, 3.540, 3.585, 3.615, 3.640, 3.685, 3.715, 3.740, 3.910, 3.940, 3.980, 3.985, 3.1010, 3.1050, 3.1105, 3.1110, 3.1115, 3.1140, 3.2000, 3.2020, 3.3065, 3.3070, 3.4020, 3.4055, 3.4080, 3.5004, 3.6075, 3.6080, 3.6095, 3.6110, and 3.7010 and adopts new §§3.797, 3.1040, 3.1190, 3.4160, 3.4165, 3.4170, 3.4175, and 3.4180, without changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3401). This chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general for the first five year period the rules are in effect there will be no fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed.

Mr. Jones also has determined that for the first five year period the adopted rules are in effect the public benefit will be clarification of funding sources. There will be no anticipated economic cost to persons or small businesses.

No comments were received regarding adoption of the sections.

Subchapter A. Criminal Justice Division-General Powers

1 TAC §3.5

The amendment is adopted under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903706
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Subchapter B. Fund-Specific Grant Policies

Division 1. State Criminal Justice Planning (421) Fund

1 TAC §§3.115, 3.130, 3.140, 3.150, 3.180

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903707
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 2. Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §§3.215, 3.230, 3.235, 3.240, 3.250, 3.280

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903708
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 3. Title V Delinquency Prevention

1 TAC §§3.305, 3.315, 3.340, 3.350, 3.380

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903709
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 4. Safe and Drug-Free Schools and Communities Act Fund

1 TAC §§3.405, 3.410, 3.415, 3.430, 3.440, 3.450, 3.480

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903710
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 5. Victims of Crime Act Fund

1 TAC §§3.500, 3.505, 3.510, 3.515, 3.540, 3.585

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903711
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 6. Crime Stoppers Assistance Fund

1 TAC §§3.615, 3.640, 3.685

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903712
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 7. Texas Narcotics Control Program

1 TAC §§3.715, 3.740, 3.797

The amendments and new section are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903713
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 8. Violence Against Women Act Fund

1 TAC §§3.910, 3.940, 3.980, 3.985

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903714
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 9. Challenge Grants

1 TAC §§3.1010, 3.1040, 3.1050

The amendments and new rule are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903715
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 10. Residential Substance Abuse Treatment

1 TAC §§3.1105, 3.1110, 3.1115, 3.1140, 3.1190

The amendments and new rule are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903716
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Subchapter C. General Grant Program Policies

Division 1. General Eligibility Requirements

1 TAC §3.2000, §3.2020

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903717
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 2. General Grant Budget Requirements

1 TAC §3.3065, §3.3070

The amendments are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903718
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 3. Special Conditions and Required Documents

1 TAC §§3.4020, 3.4055, 3.4080, 3.4160, 3.4165, 3.4170, 3.4175, 3.4180

The amendments and new sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903719
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 4. Award and Grant Acceptance

1 TAC §3.5004

The amendment is adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903720
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 5. Administering Grants

1 TAC §§3.6075, 3.6080, 3.6095, 3.6110

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903721
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Division 6. Program Monitoring and Audits

1 TAC §3.7010

The amendment is adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903722
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Chapter 3. Criminal Justice Division

The Office of the Governor adopts the repeal of §§3.555, 3.790, 3.4150, 3.8300, 3.8305, 3.8315, and 3.8320 without changes as published in the May 7, 1999 issue of the *Texas Register* (24 TexReg3401). This chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general for the first five year

period the rules are in effect there will be no fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed.

Mr. Jones also has determined that for the first five year period the adopted rules are in effect the public benefit will be clarification of funding sources. There will be no anticipated economic cost to persons or small businesses.

No comments were received regarding adoption of the repeals.

Subchapter B. Fund Specific Grant Policies

Division 5. Victims of Crime Act Fund

1 TAC §3.555

The repeal is adopted under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903724
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
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Division 7. Texas Narcotics Control Program

1 TAC §3.790

The repeal is adopted under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903725
James Hines
Assistant General Counsel
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Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Subchapter C. General Grant Program Policies

Division 3. Special Conditions and Required Documents

1 TAC §3.4150

The repeal is adopted under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903726
James Hines
Assistant General Counsel
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Effective date: July 12, 1999
Proposal publication date: May 7, 1999
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Subchapter D. Criminal Justice Division Advisory Boards

Division 3. Governor's Drug Policy Advisory Board

1 TAC §§3.8300, 3.8305, 3.8315, 3.8320

The repeals are proposed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 1999.

TRD-9903727
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 12, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 475-2594

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Part X. Department of Information Resources

Chapter 201. Planning and Management

1 TAC §201.2

The Department of Information Resources adopts an amendment to §201.2, concerning complaints, without changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3000). The text will not be republished.

The effect of the section is to adopt protest procedures for resolving vendor protests relating to purchasing issues.

The department received no comments regarding the proposed rule.

The amendment is adopted pursuant to the provisions of Texas Government Code §2054.052(a), which permits the department to adopt rules as necessary to implement its responsibilities.

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 June 17, 1999.

TRD-9903607
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Effective date: July 7, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 475–2153

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1 TAC §201.9

The Department of Information Resources adopts an amendment to §201.9, concerning board policies, without changes to the proposed text as published in the April 16,1999, issue of the *Texas Register* (24 TexReg 3001). The text will not be republished.

The effect of the section is to establish a sick leave pool program for employees of the department.

The department received no comments regarding the proposed rule.

The amendment is adopted pursuant to the provisions of Texas Government Code §2054.052(a), which permits the department to adopt rules as necessary to implement its responsibilities.

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 June 17, 1999.

TRD-9903606
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Effective date: July 7, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 475–2153

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter C. Rates

16 TAC §23.23

The Public Utility Commission of Texas adopts the repeal of §23.23 relating to Rate Design with no changes to the proposed text as published in the December 25, 1998 *Texas Register* (23 TexReg 12978). The repeal is necessary to avoid duplicative rule sections. The commission has adopted new §§25.234 relating to Rate Design, 25.235 relating to Fuel Costs-General, 25.236 relating to Recovery of Fuel Costs, 25.237 relating to Fuel Factors, and 25.238 relating to Purchased Power Cost Recovery Factors to replace §23.23 for electric service providers. The commission has adopted §26.205 relating to Rates for Intrastate Access Services to replace §23.23 for telecommunications service providers. This repeal is adopted under Project Number 17709.

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.

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

TRD-9903557
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 5, 1999
Proposal publication date: December 25, 1998
For further information, please call: (512) 936–7308

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Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter J. Costs, Rates and Tariffs

16 TAC §§25.234–25.238

The Public Utility Commission of Texas (commission) adopts new §§25.234 relating to Rate Design; 25.235 relating to Fuel Costs - General; 25.236 relating to Recovery of Fuel Costs; 25.237 relating to Fuel Factors; and 25.238 relating to Purchased Power Cost Recovery Factors, with changes to the proposed text as published in the December 25, 1998, *Texas Register* (23 TexReg 12980). These sections are adopted in Project Number 19865. The new sections replace §23.23 of this title (relating to Rate Design) as it pertains to electric service providers, update the rule, and facilitate future amendments. The new sections allow utilities to recover fuel and purchased power costs through tariffs and a fuel cost factor approved by the commission. The new sections will also provide utilities with an incentive to increase off- system sales, in order to lower overall system costs.

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 Proce-

dure Act). The commission finds that the reason for adopting the rule continues to exist.

The public benefit anticipated as a result of enforcing these sections will be the adoption of rates that are not unreasonably preferential, prejudicial, or discriminatory, and allow the utilities to recover reasonable fuel and purchased power costs in an efficient and timely manner. Also, §25.236 should increase off-system sales and therefore benefit the public from a decrease in overall unit fuel costs.

The commission received comments and/or reply comments on the proposed sections from the following parties: Texas Utilities Electric Company ("TU"), Houston Lighting & Power ("HL&P"), Entergy Gulf States, Inc. ("EGS"), Central and South West Corporation ("CSW"), El Paso Electric Company ("EPEC"), Southwestern Public Service Company ("SPS"), Texas Industrial Energy Consumers ("TIEC"), South Texas Electric Cooperative ("STEC"), Texas Electric Cooperatives, Inc. ("TEC"), and Office of Public Utility Counsel ("OPUC"). The commission solicited comments on the text of the proposed sections and on specific questions concerning the rules, which are summarized below.

A public hearing was held on March 9, 1999, at the commission offices under Texas Government Code §2001.029. TU, HL&P, EGS, CSW, and EPEC attended the hearing. TU commented that §25.235(b)(2)(A)(v) requires the notice of fuel proceedings to contain a Control Number to the proceeding before a Control Number is assigned by the commission. The commission agrees with TU and has deleted that language from the rule.

The first three questions published in the *Texas Register* were all related to the sharing of margins from off-system energy sales.

(1) Should the commission permit utilities to retain a share of the margins from off- system energy sales? If so, what is the appropriate share for retention by utility shareholders? (2) In determining the utilities' incentive to make off-system sales, should the utilities only be allowed to retain a share of the margins over and above a three-year historical average? (3) Should the commission place conditions on the eligibility of a utility to retain a share of the margins from off-system energy sales? If so, what conditions are appropriate?

OPC and TIEC filed the only comments opposing the sharing of margins from off-system energy sales. OPC urged the commission to reject the proposal for sharing of off-system sales margins between ratepayers and electric utility shareholders. OPC argued that: (1) electric utilities currently have an appropriate incentive to make off-system sales to increase efficiency and reduce unit costs; (2) ratepayers bear all risks with making off-system sales; (3) shareholders bear none of the costs of making off-system sales; (4) the proposed sharing mechanism increases incentive to "game" the system; (5) the proposed sharing mechanism does not act as a true incentive; and (6) no proof exists that an additional incentive is needed or warranted. TIEC opposed rewarding electric utilities for fulfilling their obligation to serve.

All utilities filing comments supported the sharing of margins from off-system sales. Generally all favored greater retention of margins by shareholders. SPS and STEC proposed retention rates that depended on the utility's standing in the wholesale power market. HL&P, TU, and STEC proposed allocation schemes that would reduce stranded costs.

CSW noted that the current regulatory framework provides few incentives for utilities to participate in the off-system sales markets. Increasing the incentives will increase the possibility for off-system sales and compensate for uncertainties and risks that were not part of past markets. CSW also argued that permitting utilities to retain larger shares of margins allows the utilities to recover some of the costs necessary for the trading and sales organizations to obtain the additional sales. CSW noted that other jurisdictions share margins as high as 50%.

EGS and EPEC commented that the proposed 10% share is too small, and that a 50-50 sharing of margins is more equitable. EPEC further argued that the potential rewards do not outweigh the potential risks of total immersion in the wholesale market.

HL&P suggested to expand the proposed rule to include shared margins on purchases. HL&P argued that such a sharing arrangement would align the interests of ratepayers and shareholders by encouraging the utility to: (1) improve its position to make off-system sales; (2) look for increased opportunities for savings from wholesale sales and purchases; and (3) negotiate to maximize margins.

HL&P urged the commission to adopt a sharing allocation proposed in the commission's Staff Report in Docket Number 17555, *Investigation into the Competitiveness of the Wholesale Market.* HL&P proposed to share margins 25% to ratepayers, 25% to shareholders, and 50% to reduce stranded costs. TU also supported this sharing allocation.

SPS argued that a minimum of 25% of margins should be retained by shareholders with higher proportions being retained by utilities with lower costs. SPS offered four reasons for the commission to implement margin sharing for off-system sales: (1) competitive wholesale markets require increasingly greater effort and creativity; (2) the competitive wholesale market will require higher incentives to compensate for risk than in the past; (3) SPS's wholesale non- firm sales generated on Texas gas support the Texas economy and should be encouraged; and (4) sharing margins would more appropriately reflect the equities of the situation and would provide an increased incentive to achieve even more wholesale non-firm sales.

STEC argued that the commission should provide a graduated sharing of margins from off- system sales. STEC suggested that the share of the margins should increase in proportion to the utility's participation in the short-term energy market. STEC argued that greater rewards for greater activity would help stimulate the wholesale market. STEC also suggested that utilities with stranded costs should be required to use the margins to write-down stranded costs.

The commission declines to require utilities to write-down stranded costs with their share of margins from off-system sales. However, the utilities may do so at their discretion.

The commission disagrees with the utilities' position that the sharing of margins should be 50%. The commission finds that the greater the percentage share of margins for retention by utility shareholders, the greater the possibility that the ratepayers' loss of margins will exceed the benefit from stimulating the wholesale market. The commission notes that a 10% share of the margins by utilities should stimulate the wholesale market, without risking the ratepayers' existing benefit from off-system energy sales. The commission is also concerned that the greater the percentage share of margins, the greater the possibility that the utilities will inappropriately game the system.

The second question posed by the commission asked whether the commission should permit sharing of margins for sales over some historical average. While opposing margin sharing, in the event that margin sharing is allowed, OPC argued that the proposed criteria are not specific enough to be consistently applied. Furthermore, OPC argued that any margin sharing should be applied only to off-system sales above a historic level. Finally, OPC argued that a transition provision should be included to flow through all margins to ratepayers and not to permit shareholders to share margins until after a review of the utility's base rates. OPC noted that the current rule has a similar transition mechanism.

In response to Question Number 2, all the utilities opposed the establishment of a historical threshold before margin could be shared. Although not stated in the question, some utilities also voiced opposition to the imposition of a moving three-year average.

CSW stated that while a three-year historical average may be an appropriate benchmark in certain cases, it should not be included in the rule for all utilities. CSW argued against the three- year average being a rolling average.

EGS, EPEC, HL&P, SPS, TU, and STEC argued that the level of shared margins should not be limited to those margins above some historical amount. SPS argued that such a baseline would place a time limit on sharing margins. As sales increase, the utilities' three-year average baseline would increase. Ultimately, the utility would be unable to make additional sales above the average, thereby ending the sharing of margins. TU argued that declining market prices and shrinking reserve capacity to make sales may result in no incremental sales to exceed the historical average. STEC argued that the imposition of a three-year baseline would penalize utilities that have been aggressive making off-system sales and reward those utilities that have participated the least.

The commission agrees with the utilities that it would not be appropriate to limit the sharing of margins to over and above a historical average.

The commission's third question asked for conditions that might be appropriately placed on utilities before permitting them to retain a share of off-system sales margins. Although opposing margin sharing, if the proposal is implemented, TIEC would agree with the first two conditions contained in the proposed rule. Additionally, TIEC argued that the third proposed condition for sharing off-system sales margins should be strengthened. TIEC proposed to change the condition from no detrimental transactions to all beneficial transactions. TIEC also argued that the commission should require utilities to remove all non-fuel costs from their eligible fuel expenses before permitting them to share margins from off-system sales. Finally, TIEC argued that any entitlement to retain a share of margins from off-system sales should be sunset at each fuel reconciliation, at which time the utility may demonstrate that it continues to meet the necessary conditions to share margins before the commission would permit continued sharing.

CSW did not find the proposed conditions governing a utilities' ability to retain a share of the margins from off-system sales appropriate. Specifically, CSW argued that the criterion that no off-system transactions were conducted "to the detriment of retail customers," is vague thereby leading to unreasonable multiple interpretations and arguments. CSW offered substitute language that incorporates an "overall financial benefits test" that recognizes that the utility should not be held accountable for certain activities, which may be beyond its control.

EPEC, TU, HL&P, and SPS also argued that the commission should not condition margin sharing on the vague standard that the utility conducts "no transactions to the detriment of its retail customers." HL&P argued that the commission should adopt a standard that concentrates on the aggregate efforts to engage in off-system transactions. SPS argued that a single transaction should not prohibit the sharing of margins. TU argued that the eligibility conditions to share margins are unnecessary, ambiguous, and add uncertainty to the incentives.

EGS argued that the only condition that should govern whether non-ERCOT utilities can share margins from off-system sales should be a utility's implementation of a non-discriminatory, open-access transmission tariff consistent with the FERC Order 888.

EPEC commented that the commission should not condition non-ERCOT utilities' opportunity to share margins upon their participation in a transmission region governed by an independent transmission system operator (ISO). EPEC argued that the absence of an independent transmission system operator does not justify excluding a utility from sharing margins from off-system sales.

SPS opposed the imposition of "artificial and over restrictive conditions" on the eligibility to share margins. SPS argued that such conditions would not serve the basic purpose of margin sharing, to provide an incentive to utilities to make off-system sales and thereby making the wholesale market robust. SPS questioned whether the requirement that a utility be a member of a transmission ISO in order to be eligible for sharing is evenhanded.

STEC did not oppose the proposed conditions to share in off-system margins. STEC urged the commission to adopt another condition that would tie the proportion of margins retained to the utility's level of participation in the short-term wholesale market.

The commission disagrees with the utilities about including conditions on the eligibility of a utility to retain a share of the margins. The commission notes that if the goal of margin sharing is to stimulate the wholesale market, then conditions which improve that goal should also be appropriate. The commission agrees to clarify §25.236(a)(8), so that a single transaction will not prohibit the sharing of margins.

(4) Should the commission delete §25.238(a)(3), which requires commission approval of purchased power contracts with unregulated entities, given wholesale market competition and the need for participants to have greater operational flexibility?

HL&P and CSW argued not to delete the section, but to amend it to allow commission approval rather than require commission approval. HL&P also requested clarification of the term "investor-owned electric distribution utility". EGSI and STEC argued to delete. TIEC argued that §25.238(a)(3) may no longer be necessary for short-term resources, however, because of the commission's integrated resource planning rules, the commission will still be required to approve purchase power contracts for long-term capacity resources.

The commission agrees with TIEC that because of the integrated planning rules, the commission should not delete §25.238(a)(3).

(5) Should the commission incorporate into these regulations language to address the proper handling of sulfur dioxide (SO_2) allowances?

HL&P and TU argued that SO_2 allowances are properly recorded as non-fuel revenues and expenses and are base rate items, because they are related to investment in plant and related pollution control capital expenditures. TU also argued against SO_2 allowances as fuel because the FERC rejected that idea. CSW argued against language to specify a particular treatment for SO_2 allowances, because different utilities may require different mixes of base and eligible fuel treatment of expenses and revenues associated with SO_2 allowances. EPEC argued against SO_2 allowances as fuel because the allowance transactions are already scrutinized by FERC, the EPA, and through tax reporting. EPEC also argued that allowance handling is an accounting item that does not directly impact fuel rates or fuel factors. EGSI argued that SO_2 allowances are fuel-related and should be treated as eligible fuel expense. STEC also argued that the commission should incorporate language on SO_2 allowances, because it may be appropriate to use the value of the utilities' SO_2 allowances to write down the value of any stranded costs.

The commission agrees with CSW that the commission should not incorporate such language at this time.

(6) Should the commission incorporate into these regulations language to address the proper handling of hedging gains and losses?

All parties stated that the commission should incorporate language to address the proper handling of hedging gains and losses. CSW, HL&P, TU, and EPEC stated that hedging gains and losses should be treated as eligible fuel. CSW argued that because of the current regulatory uncertainty with regard to the treatment of hedging gains and losses, utilities may be foregoing potentially beneficial hedging transactions. A significant disincentive will exist if the commission allocates hedging gains to customers and losses to shareholders. CSW also requested that the fuel rule should be modified to allow utilities to include the revenues, expenses, and transaction costs from financial derivative transactions resulting from utility hedging activities, such as exchange-traded futures, options, and swaps.

HL&P stated that the purpose of hedging activities is to reduce fuel and energy costs while minimizing risk by locking in margins on off-system transactions. Similar to margins on off-system transactions, hedging activities should be reviewed in the aggregate and as part of the actual costs of fuel and power. Currently, the use of financial instruments for hedging is unduly risky because the rule does not allow for reconciliation of costs associated with such financial transactions.

EGS stated that the marketplace for energy products has evolved such that sophisticated instruments for managing risk are now available. EGS is concerned that the current rule may result in an asymmetrical treatment of hedging gains and losses.

TU argued that unequal regulatory treatment, based upon the hindsight of whether there is a gain or a loss, and the uncertainty of regulatory treatment serves as a severe disincentive to engage in hedging transactions. In developing hedging language, the commission should use the accounting rules applicable to hedging transactions specified by Generally Accepted Accounting Principles and clearly state the applicable standards under which the reasonableness and recoverability of hedging costs will be judged.

EPEC stated that the costs associated with fuel-price hedging should be recovered through the fuel factor because such costs could be a critical part of a utility's fuel acquisition strategy and could displace other costs that would otherwise be flowed through the fuel factor. EPEC stated that to the extent that hedging practices reduce a utility's fuel costs, those saving should be flowed through to customers through the fuel factors, and shareholders should receive none of the benefits. To the extent that hedging causes a premium to be added to fuel costs, customers should likewise bear those increased costs through the fuel factor, except to the extent that any hedging activities are ultimately determined to be unreasonable in a fuel-reconciliation proceeding. Hedging costs determined to be unreasonable should be borne by shareholders.

The commission finds that it should not incorporate language addressing hedging gains and losses at this time, without further review. The commission is concerned about the appropriate sharing of the risk, between the ratepayer and the shareholder, of any hedging transactions. The commission is also concerned about any speculative financial hedging.

(7) How should the commission incorporate the following language into this rule?: "All utilities who must file fuel reconciliations shall also survey the next-day and within the day electricity markets. The survey shall be done every business day and include price and quantity. The within the day survey shall be done more than once as conditions merit. Utilities shall document this survey in electronic format. Parties may substitute information from an electronic exchange or bulletin board upon showing that such information is representative of the market. They shall also document in electronic format the existence or absence of market opportunities by comparing the survey information with the appropriate expected incremental or decremental generation cost. All utilities who conduct a market survey shall file the results monthly in electronic format and with their fuel reconciliations. Utilities who do not have contractual or other authority to engage in the purchase and sale of electricity in the wholesale market would be exempt from this requirement."

SPS and TU argued against incorporation because of the cost of implementation. TU also argued that no meaningful comparisons can be made from such data. CSW requested that the language have further clarification through workshops and public hearings. CSW and HL&P argued that different utilities operate differently and should be reviewed on a case by case basis. EPEC also argued for the language to be utility specific. EGSI offered to provide such data only on a monthly basis. STEC and TIEC argued to include the language, and TIEC requested access to all parties.

The commission agrees with some of the parties, who have commented on the difficulty of implementing such language. Therefore the commission adopts §25.236(c)(6), and limits some of the requirements from the proposed language.

Sections 25.235(b), 25.235(b)(1) - Notice

CSW proposed that §25.235(b) be moved to the commission's procedural rules. The movement will place these provisions with other procedural sections. Also, the placement of notice in the procedural rules will allow notice language to read in

a consistent manner and allow simultaneous modification with other notice provisions as the need arises.

The commission disagrees with CSW that §25.235(b) should be moved. Although the provision of notice is procedural, the commission believes that §25.235(b) is more appropriately placed at the beginning of the fuel proceeding section.

TIEC proposed to add to §25.235(b)(1) the requirement that a utility provide direct, individual notice and a copy of the filing to intervenors who participated in the utility's last fuel proceeding. This addition would allow the intervenor to evaluate an application for a fuel refund/surcharge or fuel factor change and have discussions with the utility before the 30-day period in which to request a hearing.

The commission agrees with TIEC that direct notice should be given to parties who participated in the electric utility's prior fuel reconciliation proceeding. The commission, however, does not agree with TIEC that the electric utility should be obligated to provide a copy of its filing. Upon the receipt of notice, the party can reach its own conclusions whether or not to request a copy of the filing from the electric utility.

Sections 25.236(a), 25.236(a)(1), 25.236(a)(2), 25.236(a)(5), 25.236(a)(6), 25.236(a)(7)(B), 25.236(a)(7)(C), 25.236(a)(8) - Eligible Fuel Expenses

HL&P recommended that language of §25.236(a) explicitly provide for the classification of all Account 565 expenses as eligible fuel expenses, except that expense as defined in §25.236(a)(5). Therefore, the amounts payable to others for the transmission of a utility's electricity over transmission facilities owned by others would be classified as eligible fuel expenses. TIEC on the other hand recommended that the proposed rule delete all Account 565 expenses from the definition of eligible fuel, because these expenses are related to transmission and not generation.

The commission clarified §25.236(a)(5) to reflect the commission's current position on Account 565 expenses.

In §25.236(a)(1), TU would like to exclude from eligible fuel maintenance and taxes on rail cars owned or leased by an electric utility unless such rail cars are used in connection with an internal delivery system in a mine-mouth operation. In which case, the maintenance expenses and taxes on such rail cars shall be included as eligible fuel expenses. The commission has recognized in previous TU rate and fuel reconciliation proceedings that expenses associated with internal delivery systems at mine-mouth operations are eligible expenses.

The commission concludes that TU's request to modify §25.236(a)(1) to permit recovery of railcar maintenance and taxes on internal delivery systems is not necessary, and to the extent that a utility seeks such recovery it can be addressed as a special circumstances.

CSW proposed §25.236(a)(2) to include brokerage fees in eligible fuel because it would improve fuel market activity.

The commission rejects CSW's suggestion that brokerage fees be recoverable as eligible fuel. The commission sets an electric utility's base rates to recover the salaries of its fuel staff and those rates also include the consulting fees paid by the utility when contracting for fuel. Permitting recovery of brokerage fees as eligible fuel would treat some fuel procurement expenses different than the rest.

EGS suggested that in §25.236(a)(5), which addresses Account 565, the following phrase should be added to the existing paragraph: "wheeling expenses paid to others may not be recovered for non-ERCOT utilities." TU also addressed this paragraph by proposing a change to make the commission's fuel rule consistent with its transmission rules. TU suggested the following addition, "For Account 565, the only eligible fuel expenses are the expenses properly recorded in the Account for the following: (1) payments to third parties for short-term transmission service; and (2) payments to third parties for planned transmission service only to the extent that such payments exceed the revenues received by the utility for planned transmission service provided for third parties."

The commission agrees with EGS. The commission partially agrees with the principles proposed by TU with regard to the expenses for short-term transmission service and has adopted appropriate language in §25.236(a)(5).

CSW supports the symmetry of expenses and revenues that is included in the proposed §25.236(a)(5) and §25.236(a)(7). If such symmetry was removed, then CSW would oppose the exclusion of expense without the exclusion of revenues.

The commission agrees with CSW that §25.236(a)(5) and §25.236(a)(7) should be symmetrical in their treatment of revenues and expenses. The commission believes that the language in §25.236(a)(5) and §25.236(a)(7) is symmetrical.

TIEC commented that the "special circumstances" provision of §25.236(a)(6), which would allow a utility to recover ineligible fuel expenses in the fuel factor, should be eliminated. The provision has allowed utilities to include costs that were only tangentially related to fuel, has undermined the justification for allowing the utility to earn more than a risk free return to the stockholders, is no longer appropriate as the State transitions to a fully competitive environment, and needs to be eliminated to be consistent with current commission policy. TIEC stated that if the commission did not want to eliminate the provision then it should explicitly state that the commission would not give advanced or pre-approval of expenses that occur outside the reconciliation period.

The commission rejects TIEC's argument that the "special circumstances" provision of §25.236(a)(6) should be deleted. The commission believes that there are circumstances that warrant deviation from the rules and that the public interest is served when electric utilities know that such relief is available.

Comments from EPEC, OPC, and TU were received concerning the revisions to §25.236(a)(7)(B) dealing with revenues from wheeling transactions. EPEC believed that the commission is premature to define what expenses should be allowed for recovery and what revenues might offset these expenses for wheeling transactions, when there is no independent system operator or regional transmission provider fully developed in EPEC's service area. Also EPEC's transmission rates are regulated and approved by the FERC. OPC recommended that the commission reject the rule change which excepts wheeling revenues for non-ERCOT utilities from reconcilable fuel because a portion of those revenues should be directed to Texas ratepayers who financially support the underlying assets which make the transaction possible irregardless of the fact that FERC sets the rate for non-ERCOT utilities. TU suggested that §25.236(a)(7)(B) needs to be narrowed to be consistent with the commission's transmission rules. Only revenues received from third parties for payments of losses

associated with transmission transactions should serve as an offset to eligible fuel costs.

The commission adopts §25.236(a)(7)(E) in order to be consistent with the commission's transmission rules, as suggested by TU.

In order to reflect a consistent treatment for all wheeling revenues, EGS proposed several minor changes to §25.236(a)(7)(C) as follow: "Production-related revenues from off-system sales in their entirety, except as permitted in paragraph (8) of this subsection". CSW suggested the following changes to provide symmetry to the commission's rules: "...revenues from off- system energy sales in their entirety..."

The commission finds that these clarifications are unnecessary.

Section 25.236(b) - Reconciliation Period

CSW proposed to allow the reconciliation period to be extended beyond the 36-month period if the parties to the proceeding agree. This extension may allow for the review of expenses from a particular fuel purchase contract that extended beyond the 36-month period.

The commission sees no need to adopt special language to permit the consideration of fuel expenses beyond the 36-month reconciliation period. Such an exception could be requested on a case-by-case basis and, especially if agreed to by the parties, considered for final reconciliation.

Sections 25.236(c), 25.236(c)(5) - Filing Requirements

SPS and CSW were not opposed to the elimination of the original filing requirements in §25.236(c), but they believe that filing packages should be sufficiently specific to prevent any ambiguity. OPC believed that the filing requirements should not be eliminated from the rule because a prescribed commission application form could be changed at any time without notice and the utility could omit information from a filing without obtaining a "good cause" exception.

TUEC requested that §25.236(c)(5) requiring the filing of "tables and graphs which show generation (MWh), capacity factor, fuel costs (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis" be deleted and this information be obtained through discovery. TUEC believed this information to be highly sensitive and should be protected under the provisions of a Protective Order rather than a confidentiality agreement because a party violating a commission Protective Order would be subject to the penalties specified in the Public Utility Regulatory Act (PURA).

The commission chose to remove filing requirement from the rule where duplicated by the commission's fuel filing guidelines. While the commission understands OPC's concern a requirement in a filing guideline is more easily changed that a requirement in a rule, the commission disagrees that a utility could omit information required by the filing guidelines without seeking a waiver. The commission expects electric utilities to comply with filing requirements, whether contained in rules or filing guidelines. The commission rejects TU's arguments that the information requesting in §25.236 should be deleted and obtained through discovery. The commission believes that the requested information is useful and should be provided as part of an electric utility's application. Parties should be able to perform discovery on the required information immediately, rather than waiting until the information is provided as a discovery response before probing the data.

Section 25.236(d)(1)(A) - Burden of Proof

Six utilities responded to the proposed §25.236(d)(1)(A) with very similar comments. CSW believed the proposed revision introduces several terms ("feasible" and "lowest") which may establish inappropriate higher standards of proof than the "reasonableness" standard of PURA. CSW also believed the terms "feasible" and "lowest" are inappropriately used in the revised rule language. EGS believed the proposed burden of proof language is confusing and superfluous and should be deleted. EPEC questioned whether the proposed change is intended to deviate from precedent. If the proposed change is intended to alter established precedent, then the commission should explain the need for such change, its origin and impact, and allow share holders the opportunity to comment. HL&P stated that the commission should reject the proposed language in §25.236(d)(1)(A) as an unwarranted departure from the statutory language and as being vague and ambiguous. The proposed changes move away from the statutory language of "reasonable and necessary." SPS suggested that the current rule is well understood by all the parties and that considerable amount of case law has been developed. Also, the use of the term "feasible" has raised the standard of review to perfection, which cannot be achieved. TU believed the additional phrase in §25.236(d)(1)(A) is not clear; will undoubtedly cause litigation of very contentious issues; and will add unnecessarily to the complexity of fuel reconciliation proceedings. Also, TU suggested that the phrase appears to establish a higher burden of proof. If the commission is determined to add to the statutory burden, then TU recommends two changes for clarity. The phrase "which acquired the maximum amount of power at" should be deleted and replaced with the phrase "and produced." A utility, of course, can only acquire the amount of energy required by its customers at any point in time, so the concept of "maximum amount" is unnecessary and confusing. Secondly, the phrase "to retail customers" should be deleted because TU has wholesale customers receiving service under a tariff subject to the same fuel factor as its retail customers (differentiated by the voltage level of service).

The commission agrees with the utilities and has removed the proposed burden of proof language from §25.236(d)(1)(A).

Sections 25.236(e)(5), 25.236(e)(6) - Refunds and Surcharges

TIEC stated that §25.236(e)(5) of the proposed rule would retain the requirement that the retail customers receiving service at transmission voltage level, all wholesale customers, and any group of seasonal agricultural customers would be assessed a lump-sum surcharge. TIEC would like the term "lump sum", which could mean "one-time" to be clarified.

The commission has clarified §25.236(e)(5) by removing the word "lump-sum".

CSW requested a clarification concerning §25.236(e)(6) as to whether or not the filing "windows" for various utilities apply with respect to a stand-alone surcharge or refund proceeding.

The commission has clarified §25.236(e)(6) by specifying the filing "windows".

Sections 25.237(b), 25.237(b)(1), 25.237(d)(4) - Fuel Factor Filings

TIEC suggested that the public interest would be better served to allow more timely adjustments in §25.237(b) to the fuel factor or implementation of a surcharge or refund. TIEC claims that

frequent surcharges and refunds of under- or over-collected fuel costs can cause problems for businesses with regular budget cycles. More timely adjustments to the fuel factor would minimize the need for more frequent surcharges or refunds. TIEC proposed that a utility could implement a change in the fuel factor when an over/under collection reaches the materiality threshold and an adjustment would prevent a further increase in the over/under collection balance. Such a change in the fuel factor would be conditioned on the utility reaching a settlement with the major parties. TIEC also suggested that the definition of an emergency be revised to include circumstances that would cause a utility to materially over-collect (not just under-collect) fuel costs absent a timely change in the fuel factor.

The commission notes that without a schedule for filings, the administrative workload could become unmanageable. The commission finds that changes to §25.237(b) are unnecessary.

SPS commented that all rules specifying what a utility must file in fuel proceedings be deferred to the appropriate filing package and be sufficiently specific to prevent any problem about what is required.

SPS suggested that all of the filing requirements should be removed from rules and placed in appropriate filing packages or guidelines. While the commission generally agrees with that rationale, the commission's filing guidelines for fuel proceedings are not being reviewed. The commission may consider moving all filing requirements to filing guidelines at a later date.

CSW proposed a revision to §25.237(b)(1) in order to simplify the types of information required in the fuel factor filing schedules. The proposed rule requires that specific information be provided for each month of the period in which the fuel factor has been in effect up to the most recent month for which information is available. CSW believes that the rule requires unnecessary data. If the data request extended from the conclusion of the last completed fuel reconciliation proceeding, then it would be less burdensome on the utility.

The commission notes that the most recent information is essential in determining the need to revise fuel factors.

Section 25.237(d)(4) - Filing Opportunities for Changing the Fuel Factor

CSW requested that SWEPCO's "filing window" for a fuel factor proceeding, presently April and October (pursuant to present §23.23(b)(2)(E)(iv) and under proposed rule §25.237(d)(4)), be moved to May and November. CSW has experienced some difficulties with the current SWEPCO filing dates because WTU has the March and September time slots.

The commission agrees with this change.

Section 23.23(a) - Certification of Contracts

CSW expressed a concern that even though CSW does not foresee their own use of the certification of long-term fuel contracts, some entities may find them useful. Therefore, the certification options should not be eliminated. Also, CSW noted that the certification is optional.

The commission has not processed any cases under the contract certification provisions of the existing rule. Furthermore, in light of the likely approach of retail competition and the criterion that the contract must be of at least five years in duration, the commission concludes that the value of contract certification is increasingly limited.

Section 23.23(b)(6) - Transition Rule

SPS suggested that §23.23(b)(6) dealt with more than just the transitional issues arising out of the 1993 changes to the §23.23. SPS recommended that the concept that fuel revenues and expenses should be reconciled under the rules that were in effect at the time the expense was incurred should be carried forward. CSW opposed the elimination of §23.23(b)(6). CSW proposed that a transition point be established so that all fuel-related revenues and the definition of eligible fuel be treated differently depending upon if they occurred before or after the effective date of the proposed changes.

The commission notes that the concept of a transition period is one that is temporary in nature. This transition has existed since 1993, and since then the commission has attempted to move all utilities under the current fuel rule, regardless of inconsistencies with commission orders prior to that date.

Section 23.23(c) - Cooperative Expedited Rate Change

CSW opposed the elimination of the cooperative expedited rate change section found in §23.23(c). CSW believed the section should be streamlined, if necessary, and moved to the commission's procedural rules. TEC opposed the deletion of §23.23(c) arguing that although many cooperatives have become rate deregulated, several have not. TEC pointed out that the rule has been used recently (1997) and is still useful by saving the cooperative and the commission expenses associated with a more complicated proceeding. While, if the commission deletes the rule, cooperatives would rely on the provisions of the commission's procedural rule 22.243.TEC argued that a very important difference exists under the two procedures. Under §23.23(c) an expedited case could be filed for rate changes under 5%. Under the commission's procedural rule §22.243, a rate change above 2.5% would be treated as a major rate case that has a substantial filing requirement.

The commission disagrees with CSW's and TEC's suggestions and finds that §23.23(c) is an unnecessary section. A cooperative will still be able to request expedited consideration through good cause exceptions to the rule.

The following parties filed additional comments in response to questions at the public hearing: EPEC, HL&P, EGS, and CSW. EPEC, EGS, and CSW stated that it may be premature to address whether utilities should use their share of off-system sales margins to write down stranded costs. EGS and EPEC reasserted their request for a 50-50 sharing of margins. HL&P referred to decisions of the Federal Energy Regulatory Commission ("FERC") and of other states to show that they have allocated a greater share of margins to the utilities' shareholders. The utilities outlined various risks associated with off-system sales. EPEC, EGS, and HL&P support sharing margins on all off-system sales, and CSW supports sharing of margins for incremental off-system sales. EPEC argues that §25.236(a)(8)(A) discriminates against non-ERCOT utilities, by requiring utility participation in a transmission region governed by an independent transmission operator. EGS also opposes §25.236(a)(8)(A).

The commission believes that §25.236(a)(8)(A) is necessary to have fair competition in the developing wholesale market.

EGS, HL&P, and CSW provided methods for calculating the sharing of off-system purchase margins. EGS and CSW stated that transmission expenses in Account 565 should not be included as eligible fuel. CSW argues however, that ERCOT

ISO and other ISO fees based upon transaction volume should be included. HL&P argued that transmission cost of service revenues and expenses should be included in eligible fuel.

Although the commission agrees with HL&P that transmission cost of service may be included in eligible fuel and, therefore, disagrees with CSW that the transmission expenses should not be included in eligible fuel, it will defer action on this proposal until a later time. Legislation is pending that could affect this proposal, and the commission will need to consider the impact of such legislation on the proposal, if enacted. It was the commission's intent, when it adopted the transmission rule, to entertain mechanisms for the timely recovery of new transmission investment. Finally, the commission agrees with CSW that the ERCOT ISO fees and other short-term, volume-related fees should be included in eligible fuel.

In adopting the transmission pricing rules, the commission concluded that it has the legal authority to permit new transmission costs to be recovered through the fuel factor as eligible fuel expenses. However, the same limitations that impede the implementation of a retail transmission factor also impede the recovery of wholesale transmission expenses for planned service through retail rates as eligible fuel expense. First, most of the large investor owned utilities (IOUs) have not received a thorough review of their transmission costs recently. Neither did those reviews include the unbundling of transmission costs from generation and distribution and the establishment of unbundled transmission rates. Many of the initial transmission cost of service (TCOS) cases were based on cost-of-service information from prior retail rate cases, and this information is now quite old. The transmission revenues collected from retail customers through bundled retail rates and transmission costs may have changed significantly since the last retail rate case. The other impediment is the rate freezes that HL&P, TU Electric and Texas-New Mexico Power Company (TNMP) have negotiated. Ultimately, the commission concluded that it is good public policy to permit the timely recovery of new transmission investment from retail customers. Accordingly, the commission adopted §25.193(a)(4) of the transmission rule, which permits establishment of mechanisms for the timely recovery of changes in wholesale transmission charges after a TCOS proceeding and consistent with any rate freeze.

The commission concludes that it must use the same caution with regard to the recovery of wholesale transmission expenses through fuel as it used for the implementation of a retail transmission factor. The commission cannot justify permitting the recovery of additional wholesale transmission costs from retail customers outside of a rate case until it determines the level of revenues that utilities are collecting through bundled retail rates for transmission service. Furthermore, the commission will not circumvent the agreements reflected in the rate freezes that HL&P, TU Electric and TNMP have negotiated by permitting recovery of additional costs through eligible fuel that were previously determined to be recoverable through base rates in Docket Number 15840. After the legislative session ends and the commission has an opportunity to review any changes to PURA that may affect fuel and transmission cost recovery, the commission may need to revisit these rules to make appropriate modifications. Those modifications could include the adoption of specific mechanisms for the timely recovery of new transmission investments, and those mechanisms may include the recovery of expenses associated with new transmission investment through eligible fuel.

All comments, including any not specifically referenced herein, were fully considered by the commission.

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, PURA §§34.171, 34.172, 36.203, 36.204, 36.205.Section 34.171 grants the commission authority to allow additional incentives for purchased power. Section 34.172 allows the commission to adopt rules regarding the reconciliation of recovered costs. Section 36.203 directs the commission to adopt rules which provide for the reconciliation of a utility's fuel costs, and adjustment of fuel factor. Section 36.204 grants the commission authority to allow additional incentives for purchased power. Section 36.205 grants the commission authority over purchased power cost recovery.

Cross-Index to Statutes: Public Utility Regulatory Act §§14.002, 34.171, 34.172, 36.203, 36.204, and 36.205.

§25.234. Rate Design.

(a) Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost.

(b) Rates will be determined using revenues, billing and usage data for a historical test year adjusted for known and measurable changes, and costs of service as defined in §25.231 of this title (relating to Cost of Service).

§25.235. Fuel Costs - General.

(a) Purpose. The commission will set an electric utility's rates at a level that will permit the electric utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes in this connection that it is in the interests of both electric utilities and their ratepayers to adjust charges in a timely manner to account for changes in certain fuel and purchased-power costs. Pursuant to the Public Utility Regulatory Act (PURA) §36.203 this section establishes a procedure for setting and revising fuel factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(b) Notice of fuel proceedings. In addition to the notice required by the Administrative Procedure Act (APA) to be given by the commission, the electric utility is required to give notice of a fuel proceeding at the time the petition is filed.

(1) Method of notice. Notice of fuel proceedings will be given by the electric utility as follows:

(A) Notice in all proceedings involving refunds, surcharges, or a proposal to change the fuel factor, shall be by one-time publication in a newspaper having general circulation in each county of the service area of the electric utility or by individual notice to each customer and by individual notice to parties that participated in the electric utility's prior fuel reconciliation proceeding;

(B) Notice in all reconciliation proceedings shall be by publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the electric utility and by individual notice to each customer and to parties that participated in the electric utility's prior fuel reconciliation proceeding.

(2) Contents of notice.

(A) All notices required by this section shall provide the following information:

(i) the date the petition was filed;

(ii) a general description of the customers, customer classes, and territories affected by the petition;

(iii) the relief requested;

(iv) the statement, "Persons with questions or who want more information on this petition may contact (utility name) at (utility address) or call (utility toll-free telephone number) during normal business hours. A complete copy of this petition is available for inspection at the address listed above"; and

(v) the statement, "Persons who wish to formally participate in this proceeding , or who wish to express their comments concerning this petition should contact the Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may call (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989."

(B) Notices to revise fuel factors must also state the proposed fuel factors by type of voltage and the period for which the proposed fuel factors are expected to be in effect.

(C) Notices to revise fuel factors, to refund, or to surcharge must contain the statement that, "these changes will be subject to final review by the commission in the electric utility's next reconciliation," unless, in the case of refunds or surcharges, the change is a result of a reconciliation proceeding.

(D) Notices to reconcile fuel expenses must also state the period for which final reconciliation is sought.

(3) Proof of notice may be demonstrated by appropriate affidavit. In fuel proceedings initiated by a person other than an electric utility, the notice required in this subsection must be provided in accordance with a schedule ordered by the presiding officer.

(c) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows:

(1) The commission will monitor each electric utility's actual and projected fuel-related costs and revenues on a monthly basis. Each electric utility shall maintain and provide to the commission, in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(2) Contracts for the purchase of fuel, fuel storage, fuel transportation, fuel processing, or power are discoverable in fuel proceedings, subject to appropriate confidentiality agreements or protective orders.

(3) The electric utility shall prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement shall be the same as that contained in the commission approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement shall present a complete listing of the information required to be filed which the electric utility alleges is confidential. Upon request and execution of the confidentiality agreement, the electric utility shall provide any information which it alleges is confidential. If the electric utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(4) A party that cannot view a confidential document without receiving advantage as a competitor or bidder may hire outside counsel and consultants to view the document subject to a protective order.

§25.236. Recovery of Fuel Costs.

(a) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subsection, as of April 1, 1997, and the items specified in paragraph (7) of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (6) of this subsection, eligible fuel expenses are limited to:

(1) For any account, the electric utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the electric utility may not recover maintenance expenses and taxes on rail cars owned or leased by the electric utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The electric utility may not recover an equity return or profit for an affiliate of the electric utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Public Utility Regulatory Act (PURA) §36.058.

(2) For Accounts 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For Account 501, revenues associated with the disposal of fuel combustion residuals will also be excluded.

(3) For Accounts 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees. For Account 503, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs and taxes.

(4) For Account 555, the electric utility may not recover demand or capacity costs.

(5) For Account 565, an electric utility may not recover transmission expenses paid to affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operating costs associated with transmission assets. A non-ERCOT electric utility may not recover expenses for wheeling transactions. An ERCOT electric utility may only recover the expenses properly recorded in Account 565, for payments to

parties related to unplanned transmission service, such as ISO fees, losses, and re-dispatch fees.

(6) Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (5) of this subsection. In determining whether special circumstances exist, the commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(7) Eligible fuel expenses shall not be offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in paragraphs (1) - (6) of this subsection, unless otherwise specified by the commission, eligible fuel expenses shall be offset by:

(A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and

(B) revenues from wheeling transactions except for non-ERCOT electric utilities; and

(C) revenues from off-system sales in their entirety, except as permitted in paragraph (8) of this subsection.

(D) For electric utilities in ERCOT, revenues from third parties for unplanned transmission service, such as ISO fees, losses, and re-dispatch fees.

(8) Shared margins from off-system sales. An electric utility may retain 10% of the margins from an off-system energy sales transaction if the following criteria are met:

(A) the electric utility participates in a transmission region governed by an independent system operator or a functionally equivalent independent organization;

(B) a generally-applicable tariff for firm and non-firm transmission service is offered in the transmission region in which the electric utility operates; and

(C) the transaction is not found to be to the detriment of its retail customers.

(b) Reconciliation of fuel expenses. Electric utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the PURA, Chapter 36, Subchapters C and E and may be performed in any general rate proceeding under the PURA, Chapter 36, Subchapter D. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.

(c) Petitions to reconcile fuel expenses. In addition to the commission prescribed reconciliation application, a fuel reconciliation petition filed by an electric utility must be accompanied by a summary and supporting testimony that includes the following information:

(1) a summary of significant, atypical events that occurred during the reconciliation period that affected the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(2) a general description of typical constraints that limit the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(3) the reasonableness and necessity of the electric utility's eligible fuel expenses and its mix of fuel used during the reconciliation period;

(4) a summary table that lists all the fuel cost elements which are covered in the electric utility's fuel cost recovery request, the dollars associated with each item, and where to find the item in the prefiled testimony;

(5) tables and graphs which show generation (MWh), capacity factor, fuel cost (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis; and

(6) a summary and narrative of the next-day and intra-day surveys of the electricity markets and a comparison of those surveys to the electric utility's marginal generating costs.

(d) Fuel reconciliation proceedings. Burden of proof and scope of proceeding are as follows:

(1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of showing that:

(A) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers;

(B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(C) it has properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factor during the reconciliation period.

(2) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the electric utility's fuel expenses during the reconciliation period and whether the electric utility has over- or under-recovered its reasonable fuel expenses.

(e) Refunds. All fuel refunds and surcharges shall be made using the following methods.

(1) Interest shall be calculated on the cumulative monthly ending under- or over-recovery balance at the rate established annually by the commission for overbilling and underbilling in §25.28 (c) and (d) of this title (relating to Bill Payment and Adjustments). Interest shall be calculated based on principles set out in subparagraphs (A) - (E) of this paragraph.

(A) Interest shall be compounded annually by using an effective monthly interest factor.

(B) The effective monthly interest factor shall be determined by using the algebraic calculation $x = (1 + i)^{(1/12)} - 1$; where i = commission-approved annual interest rate, and x = effective monthly interest factor.

(C) Interest shall accrue monthly. The monthly interest amount shall be calculated by applying the effective monthly interest factor to the previous month's ending cumulative under/over recovery fuel and interest balance.

(D) The monthly interest amount shall be added to the cumulative principal and interest under/over recovery balance.

(E) Interest shall be calculated through the end of the month of the refund or surcharge.

(2) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(3) Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor.

(4) Intraclass allocations of refunds and surcharges shall depend on the voltage level at which the customer receives service from the electric utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given refunds or assessed surcharges based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

(5) Unless otherwise ordered by the commission, all refunds shall be made through a one-time bill credit and all surcharges shall be made on a monthly basis over a period not to exceed 12 months through a bill charge. However, refunds may be made by check to municipally-owned electric utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over the refund or surcharge period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the period in which the refund or surcharge will be made.

(6) A petition to surcharge or refund a fuel under- or over-recovery balance not associated with a proceeding under subsection (d) of this section shall be processed in accordance with the filing schedules in §25.237(d) of this title (relating to Fuel factors) and the deadlines in §25.237(e) of this title.

(f) Procedural schedule. Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after a materially complete petition was filed. However, if the deadlines result in a number of electric utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.

§25.237. Fuel Factors.

(a) Use and calculation of fuel factors. An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) Fuel factors are determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect. Fuel factors must account for system losses and for the difference in line losses corresponding to the type of voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

(2) An electric utility may initiate a change to its fuel factor as follows:

(A) An electric utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subsection (d) of this section.

(B) An electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.

(C) An electric utility's fuel factor may be changed in any general rate proceeding.

(3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:

(A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any unreasonable costs incurred will be refunded to the electric utility's customers.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor, but requests by the electric utility to make refunds or surcharges may only be made at the times allowed by this paragraph. An electric utility may petition to make refunds or surcharges at the specified times that these rules allow an electric utility to change its fuel factor irrespective of whether the electric utility actually petitions to change its fuel factor at that time. An electric utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subsection (d) of this section when it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. An electric utility shall petition to make a refund at any time that it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is

greater than or equal to 4.0% of the annual estimated fuel cost figure most recently adopted by the commission, as shown by the electric utility's fuel filings with the commission.

(b) Petitions to revise fuel factors. During the first five business days of the months specified in subsection (d) of this section, each electric utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the Office of Regulatory Affairs and the Office of Public Utility Counsel. Each petition must be accompanied by the commission prescribed fuel factor application and supporting testimony that includes the following information:

(1) For each month of the period in which the fuel-factor has been in effect up to the most recent month for which information is available,

(A) the revenues collected pursuant to fuel factors by customer class;

(B) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and

(C) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.

(2) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the type of voltage at which the electric service is provided.

(c) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(1) In a proceeding to revise fuel factors, an electric utility has the burden of proving that:

(A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;

(B) the electric utility's estimated monthly kilowatt-hour system sales and off- system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and

(C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the type of voltage at which the electric service is provided.

(2) The scope of a fuel factor revision proceeding is limited to the issue of whether the petitioning electric utility has appropriately calculated its estimated eligible fuel expenses and load.

(d) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors may only be filed during the first five business days of the month in accordance with the following schedule:

(1) January and July: El Paso Electric Company and Central Power and Light Company;

(2) February and August: Texas Utilities Electric Company and Brazos Electric Power Cooperative, Inc.;

(3) March and September: West Texas Utilities Company and Entergy Gulf States, Inc.

(4) April and October: Houston Lighting & Power Company;

(5) May and November: Southwestern Electric Power Company, Southwestern Public Service Company, and Lower Colorado River Authority; and

(6) June and December: Texas-New Mexico Power Company, South Texas Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., and any other electric utility not named in this subsection that uses one or more fuel factors.

(e) Procedural schedule. Upon the filing of a petition to revise fuel factors in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(1) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

(2) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

(f) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

§25.238. Power Cost Recovery Factors (PCRF).

(a) Application. The provisions of this subsection apply to all investor-owned electric distribution utilities, river authorities and cooperative-owned electric utilities.

(1) An electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority, or from qualifying facilities may be allowed to include within its tariff a PCRF clause which authorizes the electric utility to charge or credit its customer for the cost of power and energy purchased to the extent that such costs vary from the purchased power cost utilized to fix the base rates of the electric utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and/or energy. The terms and conditions of such PCRF clause, which may include the method in which any refund or surcharge from the electric utility's wholesale supplier will be passed on to its customers, shall be approved by an order of the commission.

(2) Any difference between the actual costs to be covered through the PCRF and the actual PCRF revenues recovered shall be credited or charged to the electric utility's ratepayers in the second succeeding billing month unless otherwise approved by the commission.

(3) If the electric utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, the electric utility shall submit the purchased power contract to the commission for approval of the terms, conditions and price. If the commission issues an order approving the purchase, a PCRF may be applied to such purchases.

(4) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period:

(A) investor-owned electric distribution utilities shall be subject to a 10% penalty on excess collection,

(B) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

(5) The electric utility shall maintain and provide to the commission, monthly reports containing all information required to monitor the costs recovered through the PCRF clause. This information includes, but is not limited to, the total estimated PCRF cost for the month, the actual PCRF cost on a cumulative basis, total revenues resulting from the PCRF and the calculation of the PCRF.

(b) Application. The provisions of this subsection apply to all investor-owned generating electric utilities and river authorities.

(1) An electric utility which purchases electricity from qualifying facilities may be allowed to include within its tariff a PCRF clause which authorizes the electric utility to charge or credit its customers for the costs of capacity purchased from cogenerators and small power producers. These costs shall be included in the PCRF only to the extent that such costs vary from the costs utilized to fix the base rates of the electric utility. The terms and conditions of such PCRF shall be approved by an order of the commission.

(2) Purchased power costs that are recovered through the PCRF shall be excluded in calculating the electric utility's fixed fuel factor as defined in §25.237 of this title (relating to Fuel Factors).

(3) Costs recovered through a PCRF shall be allocated to the various rate classes in the same manner as the embedded costs of the electric utility's generation facilities allocated in the electric utility's last rate case, unless otherwise ordered by the commission. Once allocated, these costs shall be collected from ratepayers through a demand or energy charge.

(4) Any difference between the actual costs to be recovered through the PCRF and the PCRF revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

(5) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period, the electric utility shall be subject to a 10% penalty on excess collections.

(6) The electric utility shall maintain and provide to the commission, monthly reports containing all information required to monitor costs recovered through the PCRF. This information includes, but is not limited to, total estimated PCRF cost for the month, the actual PCRF cost, total revenue resulting from the PCRF and the calculation of the PCRF clause.

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 June 15, 1999.

TRD-9903555
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 5, 1999
Proposal publication date: December 25, 1998
For further information, please call: (512) 936–7308

Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter J. Costs, Rates and Tariffs

16 TAC §26.205, §26.206

The Public Utility Commission of Texas (commission) adopts new §26.205 relating to Rates for Intrastate Access Services and §26.206 relating to Depreciation Rates with no changes to the proposed text as published in the December 25, 1998 *Texas Register* (23 TexReg 12986). Section 26.205 replaces §23.23(d) of this title (relating to Rate Design). Section 26.206 replaces §23.61(h) of this title (relating to Telephone Utilities) as it concerns depreciation rates. The new sections clarify requirements for intrastate access tariffs and appropriate depreciation practices of dominant certificated telecommunications utilities. These sections are adopted under Project Number 19866.

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 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested specific comments on the Section 167 requirement as to whether the reason for adopting or readopting the rules continues to exist. The Office of Public Utility Counsel commented that the proposed changes are commensurate with the Sunset review process. The commission finds that the reason for adopting the rules continues to exist.

These sections 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, and specifically, PURA §§53.001, 53.003, 53.056(d) and 60.001. Section 53.001 provides the commission authority to establish and regulate rates of a public utility. Section 53.003 requires the commission to ensure that rates charged by a public utility are just and reasonable, and establishes criteria for that determination. Section 53.056(d) provides that a company electing under PURA Chapter 58 may determine its own depreciation rates and amortizations but must report any changes thereto to the commission. Section 60.001 requires the commission to ensure that the rates of an incumbent local exchange company are not unreasonably preferential, prejudicial, or discriminatory and are applied equitably and consistently.

Cross-Index to Statutes: Public Utility Regulatory Act §§14.002, 53.001, 53.003, 53.056(d) and 60.001.

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 June 15, 1999.

TRD-9903556
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 5, 1999
Proposal publication date: December 25, 1998
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TITLE 19. EDUCATION

Part VII. State Board for Educator Certification

Chapter 227. Admission to an Educator Preparation Program

19 TAC §§227.1, 227.10, 227.20

The State Board for Educator Certification adopts §§227.1, 227.10 and 227.20, concerning Admission to an Educator Preparation Program, without changes to the proposed text as published in the May 21, 1999, issue of the *Texas Register* and will not be republished.

In its proposed Framework for Educator Preparation and Certification the Board stated as an underlying assumption that "Board rules must identify a single set of standards applicable to all educator preparation programs to enhance flexibility in program delivery and to accommodate multiple routes."

To allow the profession to have a voice in establishing the standards under which they will be governed, staff convened representatives from the Consortium of State Organizations for Texas Teacher Education (CSOTTE) to assist in the development of rules. The CSOTTE membership or representatives recommended the initial components, which were based on principles of high standards flexibility, and accountability. The initial CSOTTE draft was then disseminated to the membership of each of the CSOTTE organizations as well as to others across the state, including college and university presidents, provosts, and vice presidents for academic affairs. The Consortium representatives considered all input received at an April 16, 1998, meeting and revised the initial draft to incorporate additional ideas from the field. At its May meeting and during its June retreat in 1998, the Board discussed the proposed components of the candidacy rules. At its November 1998 meeting, the Board discussed the proposed rule. No suggestions for changes were made.

Developing a single set of quality admission standards will assure consistency in educator preparation as well as the accountability of those programs through the Accountability System for Educator Preparation (ASEP). While entities are held accountable for educator preparation, these rules provide appropriate flexibility in allowing individual preparation programs to determine if applicants possess the characteristics associated with success in the program and the profession.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Education Code (TEC), §21.044 which requires the State Board for Educator Certification to propose rules that establish training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. Section 21.044 also requires the Board to specify the minimum academic qualifications required for a certificate and to propose rules governing educator preparation.

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 June 21, 1999.

TRD-9903680
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: July 11, 1999
Proposal publication date: May 21, 1999
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Chapter 228. Requirements for Educator Preparation Programs

19 TAC §§228.1, 228.2, 228.10, 228.20, 228.30, 228.40, 228.50, 228.60

The State Board for Educator Certification proposes new §§228.1, 228.2, 228.10, 228.20, 228.30, 228.40, 228.50 and 228.60, concerning Requirements for Educator Preparation Programs, without changes to the proposed text as published in the May 21, 1999, issue of the *Texas Register* and will not be republished.

In its proposed Framework for Educator Preparation and Certification the Board stated as an underlying assumption that "Board rules must identify a single set of standards applicable to all educator preparation programs to enhance flexibility in program delivery and to accommodate multiple routes."

To allow the profession to have a voice in establishing the standards under which they will be governed, staff convened representatives from the Consortium of State Organizations for Texas

Teacher Education (CSOTTE) to assist in the development of rules. The CSOTTE membership or representatives recommended the initial components, which were based on principles of high standards flexibility, and accountability. The initial CSOTTE draft was then disseminated to the membership of each of the CSOTTE organizations as well as to others across the state, including college and university presidents, provosts, and vice presidents for academic affairs. The Consortium representatives considered all input received at an April 16, 1998 meeting and revised the initial draft to incorporate additional ideas from the field. At its May meeting and during its June retreat in 1998, the Board discussed the proposed components of the candidacy rules. At its November 1998 meeting, the Board discussed the proposed rule. No suggestions for changes were made.

At its November 1998 meeting, the Board discussed the proposed rule and directed staff to add language regarding the approval of additional certificate fields at approved entities. Those entities that are fully accredited may request by letter of intent additional certificate fields within the same classes of certificates for which they are currently approved. The Executive Director must approve the request. If additional fields are to be added in a different class from what current approval allows, the entity must present a full proposal for consideration and approval by the Board.

Four additional issues have been addressed in this version of the rule:

(1) more specific language has been included to emphasize the intent of the Board to provide for multiple routes to certification including Centers for the Professional Development of Teachers and alternative routes in accordance with TEC §21.047 and TEC §21.049;

(2) a section has been added to require that institutions with branch campuses or centers be responsible for those campuses'/centers' addressing the requirements of this chapter as well as Chapters 227 (admission requirements) and 229 (Accountability System for Educator Preparation);

(3) a reminder that approval of certificate programs by the Board or by the Executive Director is contingent upon approval by other governing bodies such as the Texas Higher Education Coordinating Board or Boards of Regents and other members of program collaboratives; and

(4) stipulation of a minimum length of teaching required for the certificate in compliance with TEC §21.044.

In addition, §228.2 has been added to define "ongoing, relevant field-based experiences" as intended by the Board to ensure consistency among educator preparation programs.

Developing a single set of quality program standards will assure consistency in educator preparation as well as the accountability of those programs through the Accountability System for Educator Preparation (ASEP). While entities are held accountable, these rules provide for appropriate flexibility and creativity in the design and delivery of educator preparation.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Education Code (TEC) §21.044, which requires the Board to establish training requirements a person must accomplish to obtain a certificate; TEC §21.045, which requires the Board to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; TEC §21.047, which requires the Board to aid the development of Centers for the Professional Development of Teachers; and TEC §21.049, which directs the Board to provide alternative routes to certification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 1999.

TRD-9903681
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Effective date: July 11, 1999
Proposal publication date: May 21, 1999
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Chapter 230. Professional Educator Preparation and Certification

Subchapter A. Assessment of Educators

19 TAC §230.5

The State Board for Educator Certification adopts an amendment to §230.5, concerning Educator Assessment, without changes to the proposed text as published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3818) and will not be republished.

During the development of the Framework for Educator Preparation and Certification, the Board discussed in general terms requirements for admission to educator preparation programs, which included an assessment of general knowledge, reading, writing, and mathematical and critical thinking skills. With the implementation of the Accountability System for Educator Preparation (ASEP), the Board discussed at the June 1998 retreat its intent to allow each preparation program to determine how these skills would be assessed and to set the level of performance required for admission to the program. Agenda Item #13 proposing new rules for admission reflects the Board's intent.

The TASP test–which assesses reading, writing, and mathematics–has been used since 1991 as one of the primary tools for basic skills assessment for admission to all approved educator preparation programs. As required by TEC §54.306, Texas public institutions of higher education also use the TASP to determine a student's eligibility to enroll in upper-division coursework.

Over the past several years, legislation has allowed various other measures to substitute for the TASP, including: (1) qualifying scores on the Scholastic Achievement Test (SAT), American College Test (ACT), and the Texas Assessment of Academic Skills (TAAS); and (2) achieving a grade of "B" or higher in specific courses identified by the Texas Higher Education Coordinating Board. At its October 3, 1997, meeting, the Board aligned SBEC's TASP exemption standards with revisions then adopted by the Texas Higher Education Coordinating Board.

The Board has had numerous discussions concerning its philosophy that educator preparation programs should have more flexibility in determining who is eligible for admission into their programs. Educator preparation programs will ultimately be held accountable for those admission decisions by the Accountability System for Educator Preparation. The Board discussed this proposed rule at its November 1998 meeting but did not suggest any revisions to the proposal at that time.

Under the amended rules, Educator preparation programs may use multiple ways to determine if an applicant has attained appropriate levels of knowledge and skill in reading, writing, and mathematics. In addition, programs can incorporate assessments into their curriculum, which identify the knowledge, skills and characteristics that a potential educator possesses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation programs. Texas Education Code (TEC) §21.041(4) requires the Board to specify requirements for the issuance of a certificate.

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 June 21, 1999.

TRD-9903682
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: July 11, 1999
Proposal publication date: May 21, 1999
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Subchapter Q. Permits

19 TAC §§230.501-230.507

The State Board for Educator Certification adopts amendments to §§230.501-230.507, concerning Permits, without changes to the proposed text as published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3819) and will not be republished.

The various types of permits, the procedures for requesting permits, and the renewal of permits are currently contained in 19 TAC Chapter 230, Subchapter Q, Permits. The permit process is designed to allow districts to place an individual in a position for which they are not certified when the district cannot find an appropriately certified educator. The district must document that it has not been able to hire a certified educator and that the non-certified individual will have a support system, including a mentor. The individual must have a deficiency plan from an educator preparation program that leads to issuance of the appropriate certificate for the assignment. The Emergency Permit (Certificate) is valid for one year with the possibility of two one-year renewals. Districts request the permits through the certification officer located at each education service center. The permit is the property of the requesting district and is not transferable to another district. When an individual serving on a permit moves from the original district to another district, the receiving district must request a new permit for that individual. However, the validity period for the individual on a permit is cumulative in that the time spent in each district is used for the total validity period of the permit.

An amendment to Subchapter Q was adopted by the Board on January 9, 1998 adding §230.512 Emergency Certificates. This amendment aligned the terminology used in Subchapter Q, Permits, with the terminology contained in TEC §21.041(b)(2).

The Board has discussed several issues in previous meetings: (1) documentation required by the superintendent to support the request, (2) adequate support structure for the teacher, (3) notification of parents, (4) types of emergency certificates, (5) who should serve on an emergency certificate, (6) enforcement of the rule, and (7) flexibility in the rule.

At the Board's September 4, 1998 meeting, a Proposed New Chapter 243 (relating to Emergency Certificates) was discussed. Although the proposed chapter addressed issues previously discussed by the Board, concerns were expressed over the impact on school districts by trying to change the process all at once. The Board asked staff to identify the components that should be addressed in the near future and consider only amending Subchapter Q.

At the Board's November 6, 1998, meeting, a proposed amendment to Chapter 230, Subchapter Q (relating to Permits) was provided for discussion. The Board heard public testimony and discussed the proposed amendments. After the discussion, the Board asked staff to bring the proposed amendments back for the January meeting to allow Board members more time to study the proposed amendments along with the public testimony.

Based on the Board's discussion and the public testimony, staff has revised Subchapter Q to ensure consistency and to provide clarity. Comments and concerns from the Board's discussions and the public testimony have been incorporated into the chart and identified in Subchapter Q as appropriate. In addition, the permit nomenclature in Subchapter Q has been revised to be in line with the terminology used by the Texas Education Agency. For example, "Career and Technology" is now used in lieu of "Vocational"; consequently, Subchapter Q is revised accordingly.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code (TEC) §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be issued, including emergency certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 1999.

TRD-9903683
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Executive Director
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Effective date: July 11, 1999
Proposal publication date: May 21, 1999
For further information, please call: (512) 469-3001

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter S. Association Plans

28 TAC §21.2701–21.2706

The Commissioner of Insurance adopts new §§21.2701 - 21.2706 concerning health benefit plans issued to associations and bona fide associations. Sections 21.2703 and 21.2704 are adopted with changes to the proposed text as published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 293). Sections 21.2701, 21.2702, 21.2705 and 21.2706 are adopted without changes to the proposed text and will not be republished.

These new sections are necessary to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191, 42 U.S.C. 300gg et seq.) and the interim regulations promulgated by the Department of Health and Human Services, Health Care Financing Administration, as 45 CFR Subtitle A, Parts 144 and 146. These sections also clarify the applicability of HIPAA and Texas insurance statutes and regulations to health benefit plans issued and made available to associations and bona fide associations.

After receiving public comments, the department has made certain revisions. Section 21.2703 was revised to clarify that carriers other than HMOs may consider an association member's health status-related factors in determining whether to issue coverage to that member. This revision was in response to a commenter's concern that association plans could have guaranteed issue requirements placed upon them. While it is true that bona fide associations, by their very nature, may not consider a member's health status-related factors, such is not the case with associations that are not bona fide.

Section 21.2704(b) was revised by allowing a carrier to cancel or non-renew an association or bona fide association member's coverage if that member discontinues membership in the association or bona fide association. Cancellation or non-renewal for this reason is consistent with HIPAA. Section 21.2704(c) was revised to allow a coordination of benefits provision that complied with group coordination of benefits provisions of state law in association and bona fide association plans. Such provision would allow plans that were sold to association and bona fide association members before they attained Medicare eligibility to exclude payment to the extent that Medicare paid.

Adopted §21.2701 sets forth the scope of these sections. Section 21.2702 defines relevant terms as they appear in the sections. The terms "association" and "bona fide association" are both defined in recognition of the different regulatory schemes for associations under Texas law and bona fide associations under HIPAA and the federal interim regulations. Association is the broader term and encompasses bona fide associations. Bona fide associations must have been in active existence for five years, rather than an association's active existence of two years. In order to be a bona fide association, health status-related factors may not be considered in accepting members into the bona fide association, or in making health benefit plans available to members of the bona fide association. The practical effect of the difference between associations and bona fide associations is that upon or after issuance of a health benefit plan to a bona fide association all members of the bona fide association are guaranteed the right to coverage regardless of the members' health status-related factors, whereas a carrier other than an HMO that issues a health benefit plan to an association that is not a bona fide association is not prohibited from declining coverage to a member based upon the health status-related factors of that member. These definitions are consistent with HIPAA and Texas' existing statutes and regulations regulating group health benefit plans.

Section 21.2703 clarifies that plans issued to associations and bona fide associations as defined in these new sections will be governed by statutes and regulations relating to group insurance and group HMO products providing medical/surgical benefits or services. This section also specifies that carriers other than HMOs that issue health benefit plans to associations that are not bona fide may consider health status-related factors in their determination of whether to issue coverage to association members. Rating methodologies used to determine the premium for each member of an association must be actuarially sound and in compliance with the applicable statutory and regulatory rating requirements. Section 21.2704 sets forth the guaranteed renewability requirements for association and bona fide association health benefit plans. For purposes of HIPAA, plans issued to associations, whether bona fide or not, are subject to the renewability provisions of the individual market provisions of HIPAA.

Section 21.2705 requires that health carriers that issue health benefit plans to associations or bona fide associations provide certifications of coverage. Health benefit plans issued to associations or bona fide associations are considered creditable coverage under HIPAA and Texas law. Section 21.2706 allows a health carrier to refuse to issue coverage to a bona fide association in accordance with the carrier's underwriting standards and criteria. However, if a health benefit plan is issued to a bona fide association, the health carrier must issue coverage to all members, and dependents of members if dependent coverage is offered, of the bona fide association that apply for coverage, regardless of health status-related factors.

Comment: One commenter states that the regulations exceed the department's statutory authority, and will have an adverse effect on the individual insurance buying public.

Response: The department disagrees. Statutory authority for the adoption of these sections arises from HIPAA and the Texas Insurance Code, and these sections merely clarify the statutory requirements for health benefit plans issued to associations and bona fide associations. Rather than having an adverse effect on the individual insurance buying public, these sections clarify the additional protections under HIPAA to which individuals who purchase coverage issued to associations and bona fide associations are entitled.

Comment: One commenter states that the proposed regulations are not consistent with HIPAA, because the sections subject association coverage in Texas to the Texas group statutes and regulations, whereas HIPAA considers bona fide association coverage to be group coverage and association coverage that is not bona fide to be individual coverage.

Response: The department disagrees with the commenter's interpretation of HIPAA in conjunction with state law. HIPAA considers coverage issued to an association or a bona fide association to be individual coverage. See, 45 C.F.R. 144.102(c).

Texas, on the other hand, considers association and bona fide association coverage to be group coverage. See, Texas Insurance Code Article 3.51-6, §1(a)(2). The inconsistency between state and federal regulation of association and bona fide association coverage is addressed in these sections, by recognizing that association and bona fide association coverage is considered group coverage in Texas, and at the same time applying HIPAA individual standards to Texas associations and bona fide associations. Application of HIPAA individual standards to Texas associations and bona fide associations is accomplished by recognizing that association and bona fide association coverage must be guaranteed renewable, and by recognizing that if a carrier issues coverage to a bona fide association, coverage must be issued to each member that applies for coverage without regard to the health status-related factors of individual members. Thus, Texas complies with HIPAA, yet retains its own regulatory scheme recognizing association and bona fide association plans as group coverage.

Comment: One commenter states that these sections attempt to make all health plans offered through associations subject to regulation as a group health plan.

Response: The department disagrees. Health plans issued to associations and bona fide associations, which in turn offer coverage to their members, will be subject to regulation as a group health plan. Health plans marketed through associations and bona fide associations where coverage is issued to the member and not the association or bona fide association is individual coverage, and subject to the statutes and rules pertaining to individual coverage. The distinction is that plans in which the master policy or agreement is issued to the association or bona fide association, and members receive certificates, are governed by these sections. Plans in which each association or bona fide association member is issued his or her own policy or evidence of coverage, and in which the association or bona fide association membership list is used by the carrier mainly as a prospect list, are not governed by these sections and will be considered individual products.

Comment: One commenter suggested withdrawing these sections in their entirety, or alternatively, suggested revisions to specific sections.

Response: The department declines to withdraw these sections, as they provide clarification for regulating association and bona fide association coverage in Texas, and bring Texas into compliance with HIPAA. However, based upon comments, revisions to the rules have been made.

Section 21.2702(1)(D). One commenter suggested that language be added to the definition of association, which explicitly indicates that an association may consider health status-related factors of association members.

Response: The department agrees that the suggested revision is useful, but declines to revise the definition of association as the definition is consistent with the Insurance Code. To make the suggested revision could force an association that does not wish to consider health status-related factors to take such factors into consideration to meet the definition of association. However, the department has made a revision to §21.2703 that addresses the commenter's concern.

Section 21.2703. One commenter expressed concern that by treating association plans as group health plans, this section would allow the department to subject association plans to the guaranteed issue requirements of small employer plans. The commenter provided suggested alternative language.

Response: The department disagrees that the language of this section would allow a future application of guaranteed issue requirements of small employer plans to association plans. Such was not the intent of this section. However, the department recognizes that clarifying language is useful, and has revised this section by adding additional language which recognizes that carriers other than HMOs may consider health status-related factors and make appropriate issuance decisions on a per-member basis. HMOs that issue coverage to associations may make initial determinations as to issuance of coverage to an association, but once coverage has been issued to an association, individual members of the association may not be excluded on the basis of health status-related factors. Rating methodologies used to determine the premium for each member of an association must be actuarially sound and in compliance with the applicable statutory and regulatory rating requirements. See, §21.2704(F). Health benefit plans issued to employer associations are subject to the requirements of the Insurance Code governing employer coverage.

Section 21.2704(b). One commenter suggests adding a provision allowing for cancellation of a member's coverage if the member ceases to belong to an association or bona fide association, in accordance with HIPAA. The commenter provided suggested language.

Response: The department agrees, and has made an appropriate revision.

Section 21.2704(c). One commenter requested that language be added that would allow a provision that excludes payments for benefits under the policy to the extent that Medicare pays for such benefits.

Response: The department agrees that a revision is appropriate, and has revised this subsection to allow a coordination of benefits provision that complies with Texas law.

For, with changes: Insurance Alliance of America.

These new sections are adopted under the Insurance Code Articles 3.42, 3.51-6 and 20A.22; the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 42 U.S.C. 300gg et seq.); the interim federal regulations implementing HIPAA published by the Department of Health and Human Services (62 FR 16985-17004); and Insurance Code Article 1.03A. The Insurance Code Article 3.42(p) grants the commissioner rulemaking authority to regulate health insurance policy forms. The Insurance Code Article 3.51-6, §5 grants the commissioner rule-making authority to regulate group insurance products. The Insurance Code Article 20A.22(c) grants the commissioner rulemaking authority to meet the minimum requirements of federal laws and regulations regarding HMOs. The minimum requirements of federal law regarding association plans are contained in HIPAA. Interim federal regulations implementing HIPAA have been promulgated by the Department of Health and Human Services and published in the Federal Register at 62 FR 16985-17004. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§21.2703. Health Care Plans Issued to Associations and Bona Fide Associations.

A health benefit plan issued to an association or a bona fide association is considered a group product, and shall comply with the statutes and regulations applicable to coverages and benefits relating to group products. Notwithstanding any other provisions of this subchapter to the contrary, health carriers other than HMOs that offer health benefit plans to associations that are not bona fide associations may decline, restrict, limit, exclude or rate-up coverage based upon a member's health status-related factors.

§21.2704. Mandatory Guaranteed Renewability Provisions for Health Benefit Plans Issued to Members of an Association or Bona Fide Association.

(a) Except as provided by subsection (d) of this section, a health carrier shall renew a health benefit plan issued to an association, or a bona fide association, at the option of the association or bona fide association, unless:

(1) the association or bona fide association has failed to pay premiums or contributions in accordance with the terms of the health benefit plan, including any timeliness requirements;

(2) the association or bona fide association has performed an act or practice that constitutes fraud, or has made an intentional misrepresentation of material fact, relating in any way to the health benefit plan, including claims for benefits under the health benefit plan;

(3) in regards only to a health benefit plan offered by an HMO or a group hospital service plan issued under the Insurance Code Chapter 20, the association or bona fide association ceases to have any covered members who reside, live, or work in the service area of the HMO or group hospital service plan, but only if coverage is terminated uniformly without regard to any health status-related factor of covered members or dependents of covered members, if dependent coverage is offered; or

(4) the health carrier is ceasing to offer health benefit plan coverage in the association market in accordance with subsection (d) of this section.

(b) A health carrier may refuse to renew the coverage of a covered member or dependent if:

(1) the member fails to pay premiums or contributions in accordance with the terms of the health benefit plan, including any timeliness requirements;

(2) the covered member or dependent has performed an act or practice that constitutes fraud, or has made an intentional misrepresentation of material fact, relating in any way to the health benefit plan, including claims for benefits under the health benefit plan;

(3) in regards only to coverage offered by an HMO or a group hospital service plan issued under the Insurance Code Chapter 20, the covered member no longer resides, lives, or works in the service area of the HMO or group hospital service plan, but only if coverage is terminated uniformly without regard to any health status-related factor of the covered member or dependent;

(4) the health carrier is ceasing to offer health benefit plan coverage in the association market in accordance with subsection (d) of this section; or

(5) the covered member or dependent ceases to be a member of the association or bona fide association to which the coverage is offered, but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of the covered member or dependent.

(c) Medicare eligibility or entitlement is not a basis for non-renewal or termination of a health benefit plan issued to an association or bona fide association or members of an association or bona fide association. However, health benefit plan coverage sold to association and bona fide association members before the members attain Medicare eligibility may contain coordination of benefit provisions that comply with Chapter 3, Subchapter V of this title (relating to Group Coordination of Benefits) and §11.511 of this title (relating to Optional Provisions).

(d) A health carrier may discontinue a particular health benefit plan pursuant to paragraph (1) of this subsection. A health carrier may discontinue all health benefit plans pursuant to paragraph (2) of this subsection.

(1) A health carrier may discontinue offering a particular type of health benefit plan offered to associations or bona fide associations only if, at least 90 days before the date coverage will be discontinued, the health carrier:

(A) provides notice in writing to each association or bona fide association and each member covered under the health benefit plan being discontinued;

(B) offers to the association or bona fide association the option to purchase any other health benefit plan currently being offered by the carrier to associations or bona fide associations; and

(C) acts uniformly without regard to any health status-related factor of covered members or dependents, or new members or dependents who may become eligible for the coverage.

(2) A health carrier may discontinue offering all health benefit plans offered to associations or bona fide associations only if, at least 180 days before the date coverage will expire, the health carrier:

(A) provides notice in writing to the commissioner of insurance, each association or bona fide association, and each covered member;

(B) discontinues and does not renew all health benefit plans issued in this state or an approved geographic service area of an HMO or group hospital service corporation to associations or bona fide associations; and

(C) acts uniformly without regard to any health status-related factor of covered members or dependents of covered members, if dependent coverage is offered, or new members or dependents who may become eligible for coverage.

(e) A health carrier that elects not to renew all health benefit plans to associations or bona fide associations in accordance with subsection (d)(2) of this section may not issue any association or bona fide association coverage in this state, or in an approved geographic service area of an HMO or group hospital service corporation, during the five year period beginning on the date of discontinuation of the last such coverage not renewed.

(f) Nothing in this section prohibits or restricts a health carrier's ability to make changes in premium rates by classes in accordance with applicable laws and regulations.

(g) Nothing in this section shall be interpreted as prohibiting a health carrier from making modifications to a health benefit plan mandated by state or federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9903577
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 5, 1999
Proposal publication date: January 15, 1999
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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 70. Enforcement

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§70.2, 70.5, 70.7-70.11, 70.51, 70.101, 70.102, and 70.104-70.106, concerning Enforcement. This action is necessary to make the commission's rules more clearly consistent with applicable state statutes and the Texas Rules of Civil Procedure. Sections 70.5, 70.10, and 70.105 are adopted with changes to the proposed text as published in the January 29, 1999 issue of the *Texas Register* (24 TexReg 498). Sections 70.2, 70.7-70.9, 70.11, 70.51, 70.101, 70.102, 70.104, and 70.106 are adopted without changes and will not be republished.

The commission readopts the rules contained in Chapter 70. This action is taken to comply with the General Appropriations Act, Article IX, §167. The notice of readoption of the review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULES

Senate Bill 1876, 75th Legislature, 1997, consolidated the commission's enforcement authority under a new Chapter 7 of the Texas Water Code (TWC). The adopted rule amendments would clarify the commission's rules to make them more clearly consistent with the enforcement provisions of TWC Chapter 7 and with the commission's general authority under TWC Chapter 5, the Texas Rules of Civil Procedure, and the Texas Administrative Procedure Act (APA).

The adopted amendment to §70.2, concerning Definitions, changes the definition of "Contested enforcement case" to make it consistent with the APA definition of "Contested case."

The adopted amendment to §70.5, concerning Remedies, expands the language regarding permit revocation or suspension to also include licenses, registrations, and certificates. This change will affect entities which currently hold any type of authorization from the commission. This amendment corresponds with TWC, §7.004, which allows the commission remedies cumulative of all other remedies.

The adopted amendment to §70.7, concerning Force Majeure, deletes the requirement in subsection (d) that the executive director respond in writing within 30 days from receipt of notification as to whether an event constitutes force majeure. The amendment also clarifies the meaning of force majeure within the framework provided by TWC, §7.251. TWC, §7.251, does not require the executive director to respond within a 30-day time period. The change would give the executive director discretion to respond fully and appropriately in a timely manner, as is consistent with the statute.

The adopted amendment to §70.8, concerning Financial Inability to Pay; Amount Necessary to Obtain Compliance, deletes the phrase "that is necessary to deter future violations" in subsection (a) and makes the rule consistent with current commission policy to make a determination of financial inability to pay based on the entire penalty amount, not just the portion of the administrative penalty assessed for deterrence. The commission will remove the limitation that an assertion of an inability to pay or a challenge to the amount of a penalty can only be made in response to an executive director's preliminary report (EDPR) or petition. The commission will allow such action simply in response to an enforcement action. This change allows the respondent an opportunity to provide documentation of financial inability to pay during the expedited enforcement process, as well as in response to an EDPR. Both changes are necessary in order to make §70.8 more clearly consistent with how financial inability to pay claims are handled by the commission.

The adopted amendments to §70.9, concerning Installment Payment of Administrative Penalty, modify subsections (a) and (b) to provide for installment payments for any kind of enforcement order. The rule originally applied only to agreed orders. This change makes the rule more clearly consistent with the legislative authority granted to the commission by TWC, §5.1175(a), and allows qualifying entities to make installment payments for payment of administrative penalties in response to all three types of enforcement orders: agreed, default, and orders arising from a proposal for decision. It has been the policy of the commission to allow such payment plans, and these revisions will formalize that policy. The proposed preamble erroneously referenced a conforming change to subsection (c); however, there is no subsection (c) in §70.9.

The adopted amendment to §70.10, concerning Agreed Orders, modifies subsection (c) to make it consistent with the 30-day publication requirement imposed by TWC, §7.075.

The adopted amendments to §70.11, concerning Notice of Decisions and Orders, prescribe the contents of a notice of a ruling, order, or decision issued by the commission. This modification reflects that the legislature has provided the public the right to comment on most proposed administrative orders, and it ensures consistency with TWC, §7.059 and §7.075. In addition, the commission is deleting the reference to Texas Health and Safety Code (HSC), §382.096, which was repealed by the Texas Legislature effective September 1, 1997.

The adopted amendment to §70.51, concerning Mandatory Enforcement Hearings, deletes subsection (a)(2)-(4). Subsection (a)(4) references HSC, §382.082, which was repealed by the Texas Legislature effective September 1, 1997. The language in subsection (a)(2) and (3) is not required by TWC, §5.117, relating to Mandatory Enforcement Hearings, is inconsistent with the current regulatory criteria for formal enforcement, and is, therefore, being deleted. In addition, the last sentence of subsection (a), reading "a certificate of convenience and necessity is not considered to be a permit or license for purposes of this section" is deleted, because a certificate of convenience and necessity is considered a "permit or license" for enforcement purposes.

The adopted amendment to §70.101, concerning Executive Director's Preliminary Report, deletes the provision that an EDPR can be superseded by a petition. The commission

believes that this language is repetitive, because an EDPR is, in practice, also a petition. In addition, a provision is added to reflect that the EDPR must include the corrective action requested by the executive director as provided by TWC, §7.054.

The adopted amendment to §70.102, concerning Pleadings Other than the Executive Director's Preliminary Report, modifies subsection (c) to provide that a pleading should be allowed "within seven days of the date of the hearing," as opposed to "up to seven days prior to the hearing." Subsection (c) is also modified to provide for pleadings filed after the seventh day. In addition, subsection (d) is modified to include language concerning adding or non-suiting additional parties in an amendment to an EDPR by the executive director. All of these changes will provide consistency with the rules governing civil procedure in Texas courts.

The adopted amendments to §70.104, concerning Notice of Executive Director's Preliminary Report, provides additional methods of service consistent with the Texas Rules of Civil Procedure, allows the EDPR to be served by facsimile, and reflects the process for serving the respondent by certified mail and first class mail simultaneously.

The adopted amendment to §70.105, concerning Answer, deletes unnecessary language concerning irrigators and irrigator pump installers. The language is no longer necessary given the repeal of TWC, §34.011, which contained this requirement. This change consistently applies the rules regarding a request for a hearing to all programs and requires all respondents to file an answer within 20 days of the date the EDPR is received. In addition, the proposed amendment modifies the text of the rule to improve readability.

The adopted amendment to §70.106, concerning Default Order, adds a new subsection (d) to provide for the effective date of a default order. This change is to ensure consistency with commission procedural rules and the APA.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that it is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rules are not major environmental rules because they prescribe procedural requirements for commission enforcement actions. The adopted rule amendments do not prescribe any major new requirements on any sector of the state. The intent of this action is to make the rules more clearly consistent with TWC, Chapters 5 and 7, the APA, and the Texas Rules of Civil Procedure. Furthermore, the rules are consistent with both state and federal mandates, and they are adopted under authority granted by TWC, Chapters 5 and 7. Additionally, the Code, §2001.004, requires state agencies to adopt rules of practice. Finally, the adoption concerns procedural amendments to existing rules and, thus, delegation agreements or contracts are not expressly implicated.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of these rules under the Code, 2007.043. The following is a summary of that assessment. The specific purpose of this action is to make these rules more clearly consistent with TWC, Chapters 5 and 7. The rules also provide for greater consistency with the Texas Rules of Civil Procedure and the APA. Adoption of these rules will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of these rules because they affect only the commission's procedural requirements for enforcement actions and clarify the rules for consistency purposes.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rule and found that the rulemaking is identified in the Coastal Coordination Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission has prepared a consistency determination for the adopted rules under 31 TAC §505.22 and found that the rules are consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the adopted rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the adopted rules include the administrative policies and the policies for specific activities related to construction and operation or solid waste treatment, storage, and disposal facilities and discharge of municipal and industrial wastewater to coastal areas. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules are only procedural in nature and continue to ensure the effective enforcement of commission rules and permits concerning these matters. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because they will result in effective enforcement and greater consistency with applicable state statutes, the APA, and Texas Rules of Procedure.

HEARING AND COMMENTERS

A public hearing on this proposal was held March 1, 1999 and the comment period closed on April 5, 1999. No oral comments were received at the public hearing. Written comments were received from the Texas Center for Policy Studies (TX Center); Henry, Lowerre, Johnson & Frederick (Lowerre); and an individual.

ANALYSIS OF TESTIMONY

The individual suggested that the proposed change to §70.10(c) should more clearly reflect that notice of the proposed agreed order be published, not the text of the complete proposed agreed order.

The commission agrees and proposes the following change to §70.10(c) to clarify the rule: "When an agreement is reached, the executive director shall *publish notice of the proposed agreed order in the Texas Register, providing 30 days for public comment. Once the notice of the proposed agreed order is published, the executive director shall ....* "

Lowerre contended that both the agency's current rules and the proposed amendments are inconsistent with the United States

Environmental Protection Agency's (EPA) minimum standards for authorization of the National Pollutant Discharge Elimination System (NPDES), Underground Injection Control (UIC), and Resource Conservation and Recovery Act (RCRA) programs. Lowerre is primarily concerned with amendments to §§70.7, 70.11, and 70.51.

Lowerre's first concern deals with the proposed amendment to §70.7(a). The commenter stated that the agency's force majeure provision violates federal law, which requires that all violations of the law be treated as violations. Additionally, Lowrerre stated that the provision prevents EPA enforcement actions and citizens' suits for violations when such situations arise, and that the commission's rules declare certain violations of the federal law to not be violations under state law.

The state legislature has recognized that acts of God, war, strike, riot, or other catastrophes may exist which cause violations of the state's environmental regulations and has provided a force majeure defense in the statutes in TWC, §7.251. The commission is bound by the authority given to it by the legislature. The force majeure provision was enacted during the 75th Legislature in order to provide a more consistent enforcement process across all environmental media regulated by the commission. The commission's proposed modification to §70.7(a) mirrors that language of the statute and clearly reflects legislative intent in the area of force majeure. In addition, staff believes the force majeure is consistent with federal law that applies to authorized programs or is otherwise applicable to state programs.

Lowerre also expressed concern that the proposed amendment to §70.11 highlights the fact that no guidance by the commission has been formulated as to what should be included in the notice sent to the *Texas Register* of the opportunity to comment on a proposed agreed order. The commenter stated that the commission's notice is not sufficient and that is does not contain notice of the responsible party, location of the violations, or types of acts which are subject to the order.

Apparently, the commenter has not challenged the correct proposed amendment. Section 70.11 concerns notice to the "parties" of the commission's rulings, orders, or decisions. Such notice is achieved by first class mail or personal delivery to the respondent in enforcement matters of the findings of the commission and is specifically provided for by statute in TWC, §7.059. Such notice does not involve *Texas Register* publication, nor is its perceived purpose to provide notice to the public at large. However, the notices are published in a format prescribed by the *Texas Register*.

However, §70.10 does concern publication of notice in the *Texas Register* of proposed agreed orders for public comment. The commission's publications include information regarding: (1) the name of the entity charged with the alleged violations; (2) commission identification numbers; (3) the physical location of the facility where the alleged violations occurred; (4) the legal citations to which rules and/or statutes have been allegedly violated; (5) the amount of the penalty assessed; and (6) a central office contact and the address and telephone number of the region where the violations occurred. In addition, each notice states that a copy of each proposed agreed order is available for public inspection should a citizen want more detailed information. The commission believes that the information included in the notice is sufficiently detailed to convey the nature of the violations and apprise the public of who is responsible and where the alleged violations occurred. The purpose of the notification is to apprise the public of the general circumstances surrounding the violations, and the commission contends that the objective is fully satisfied with the information currently published in the *Texas Register* for proposed agreed orders.

Lastly, Lowerre, along with the TX Center, expressed concern about the deletion of language in §70.51(a), concerning the definition of substantial noncompliance. Lowerre suggested that the commission should adopt the EPA's definitions of noncompliance, including the substantial noncompliance definition for the NPDES program. The TX Center expressed concern that without the substantial noncompliance definition, the regulated community would be left without clear rules on what constitutes substantial noncompliance, which the TX Center claims could lead to inconsistent application of the mandatory enforcement provisions and situations in which substantial noncompliance is not addressed through the mandatory enforcement hearing process, thereby circumventing the statutory intent.

The commission finds that §70.51(a)(4) refers to a Texas Health and Safety Code provision relating to substantial noncompliance which has been repealed. Texas Health and Safety Code, §382.082, which is incorporated by reference in the current rules, was repealed by Acts 1997, 75th Legislature, Chapter 1072, §60(b)(5), effective September 1, 1997. Thus, the reference to a repealed statute is inappropriate.

Section 70.51(a)(2) also defines substantial noncompliance and the amendment deletes that paragraph. The commission believes that the definition in the current rules limits the discretion of the commission in mandatory enforcement to only those situations defined by the rules. Currently, the commission uses more stringent, all-encompassing criteria to initiate to formal enforcement, which fully satisfies the governing statute. The commission has fully implemented TWC, §5.117, and believes that the deletion of the substantial noncompliance definition provides flexibility to pursue a more rigorous and systematic approach to enforcement matters. In addition, deletion of the substantial noncompliance definition provides flexibility across media, which is an important goal of the commission. Chapter 361 and Chapter 382 of the Texas Health and Safety Code have no comparable definition. Therefore, the TWC, Chapter 26 substantial noncompliance definition creates a separate, less-stringent standard, which is inconsistent with the goal of creating a uniform regulatory scheme across all regulated media.

Subchapter A. Enforcement Generally

30 TAC §§70.2, 70.5, 70.7–70.11

STATUTORY AUTHORITY

The amendments are adopted under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §§7.001 *et seq.*, which establishes the commission's enforcement authority and provides specific requirements governing that authority. The Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

§70.5. Remedies.

Remedies available to the commission in enforcement actions include all those found in the Texas Water Code, the Texas Health and Safety Code, and the APA. These include, but are not limited to,

issuance of administrative orders with or without penalties; referrals to the Texas Attorney General's Office for civil judicial action; referrals to the Environmental Protection Agency for civil judicial or administrative action; referrals for criminal action; or permit, license, registration, or certificate revocation or suspension. Nothing herein shall be construed to preclude the executive director from seeking any remedy in law or equity not specifically mentioned in these rules. In addition, an enforcement matter may be resolved informally without a contested case proceeding in appropriate circumstances.

§70.10. Agreed Orders.

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

(c) When an agreement is reached, the executive director shall publish notice of the proposed agreed order in the *Texas Register*, providing 30 days for public comment. Once the notice of proposed agreed order is published, the executive director shall file the agreed order with the chief clerk. The chief clerk shall then schedule the agreed order for consideration during a commission meeting under Chapter 10 of this title (relating to Commission Meetings). If the enforcement action is under the jurisdiction of SOAH, the judge shall remand the action to the executive director who will file the agreed order with the chief clerk for commission consideration. The judge is not required to prepare a proposal for decision or memorandum regarding the settlement.

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 June 17, 1999.

TRD-9903635
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: July 7, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 239–1966

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Subchapter B. Mandatory Enforcement Hearings

30 TAC §70.51

STATUTORY AUTHORITY

The amendment is adopted under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §§7.001 *et seq*, which establishes the commission's enforcement authority and provides specific requirements governing that authority. The Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

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 June 17, 1999.

TRD-9903636
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Effective date: July 7, 1999
Proposal publication date: January 29, 1999
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Subchapter C. Enforcement Referrals to SOAH

30 TAC §§70.101, 70.102, 70.104–70.106

STATUTORY AUTHORITY

The amendments are adopted under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §§7.001 *et seq*, which establishes the commission's enforcement authority and provides specific requirements governing that authority. The Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

§70.105. Answer.

(a) A respondent may file with the chief clerk a written response to the EDPR or a pleading entitled an answer which may deny the alleged violations and/or the amount of the penalty. Through the answer, the respondent may either agree to the amount of the penalties and corrective actions recommended in the EDPR or request a contested enforcement case hearing. Any answer must be filed no later than 20 days after the date on which the respondent receives notice of an EDPR. Failure to file the answer by the 20th day after the date on which the respondent receives notice of an EDPR may result in a default order, as described in §70.106 of this title (relating to Default Order), being issued against the respondent.

(b)-(f) (No change.)

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 June 17, 1999.

TRD-9903637
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Effective date: July 7, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 239–1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter A. General Provisions

Division 3. Formal Action by the Board

31 TAC §363.33

The Texas Water Development Board (the board) adopts amendments to 31 TAC §363.33, concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects without change to the proposed text as published in the April 23, 1999 issue of the *Texas Register* (24 TexReg 3181) and will not be republished.

The amendments are made to reflect creation of the Texas Water Development Fund II by Article 3, §49(d)(8) of the Texas Constitution, as a fund separate and distinct from the Texas Water Development Fund. The amendments further implement the constitutional provision by deleting reference to specific accounts as being only within the Texas Water Development Fund and by establishing the State Participation Account as a separate category for the setting of interest rates. The term Economically Distressed Areas is clarified as the Economically Distressed Area Program Account.

No comments were received on the adopted amendments.

The amendments are adopted under the Texas Water Code, Chapter 6, §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board and the Texas Constitution, Article 3, §49(d)(8).

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 June 17, 1999.

TRD-9903631
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: July 7, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Prepaid Higher Education Tuition Program

Subchapter I. Refunds, Termination

34 TAC §7.81

The Comptroller of Public Accounts adopts an amendment to §7.81, concerning the administration of the prepaid higher education tuition program, without changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3461).

These changes are proposed to conform certain provisions requested by the Internal Revenue Service in connection with the Program's application for a private letter ruling on the Program's tax status.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under the Education Code, §54.618, which gives the Prepaid Higher Education Tuition Board the authority to adopt rules to implement Subchapter F, Chapter 54, Education Code.

The amendment implements Education Code, §54.632.

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 June 14, 1999.

TRD-9903549
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: July 4, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 463-4062

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Part IV. Employees Retirement System of Texas

Chapter 73. Benefits

34 TAC §73.15

The Employees Retirement System of Texas adopts an amendment to §73.15, concerning Proportionate Retirement Program - Benefits, without changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3462).

This rule is being amended to delete subsection (a).

No comments were received regarding adoption of the amendments.

The amendment is adopted under Tex. Gov't Code §803.401, which provides authorization for the board to adopt rules for the administration of the Proportionate Retirement Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 1999.

TRD-9903685
William S. Nail
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: July 11, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 867-7125

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 4. Capitol Police

Subchapter A. Protection of State Buildings and Grounds

37 TAC §4.1

The Texas Department of Public Safety adopts an amendment to §4.1, concerning protection of State Buildings and Grounds, with changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1979).

A punctuation error is corrected in subsection (f)(3).

The justification for this section will be to ensure to the public that state-owned buildings and property are properly secured, accessible to the public, and that a safe work environment is provided to state officials and employees.

The amendment changes the definition of "Capitol Complex." The amendment is necessary to implement Texas Government Code, § 411.061, which amended the definition of capitol complex.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

§4.1. General.

(a) Under the authority of Texas Government Code, §§411.061 - 411.067, the Texas Department of Public Safety is authorized to protect the grounds, public buildings, and property of the state, to regulate parking, and to control entrance to state-owned buildings; and to regulate displays and other public use of state buildings.

(b) The Texas Department of Public Safety has designated the Capitol Police District as the primary unit responsible for carrying out its responsibilities in the Capitol Complex, and designated it as part of the Traffic Law Enforcement Division.

(c) Within the Capitol Complex, as defined herein, the Department of Public Safety will strive to provide a safe work environment for state officials and employees; to protect the grounds, public buildings, and property of the state; to regulate parking; to regulate entrance to and public use of state-owned buildings; and to investigate criminal activity occurring in these locations.

(d) These rules shall be applicable to state buildings and property within the Capitol Complex as defined in subsection (f) of this section.

(e) The provisions of these rules pertaining to public buildings and grounds do not apply to buildings and grounds of:

(1) institutions of higher education, as defined by the Texas Education Code, §61.003, as amended;

(2) state agencies to which control has been specifically committed by law; and

(3) state agencies that have demonstrated ability and competence to maintain and control their buildings and grounds and to which the General Services Commission has delegated that authority.

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

(1) Board - The State Preservation Board.

(2) Buildings and state buildings - State-owned buildings and property within the Capitol Complex.

(3) Capitol Complex - Property located in Austin, Texas, to the extent the property is owned by or under the control of the state; bounded on the north by the inside curb of Martin Luther King, Jr. Boulevard, on the east by the outside curb of Trinity Street, on the south by the outside curb of 10th Street, and on the west by the outside curb of Lavaca Street; the William P. Clements State Office Building located at 300 West 15th Street; and other locations under the jurisdiction of the capitol police district as may be approved by the director.

(4) Capitol police - Members of the Capitol Police District of the Texas Department of Public Safety.

(5) Commission - The Texas General Services Commission.

(6) Department - The Texas Department of Public Safety.

(7) Director - The director of the Texas Department of Public Safety.

(8) Park or parking - To stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers.

(9) Stand, or standing - To halt an occupied or unoccupied vehicle, other than temporarily while receiving or discharging passengers.

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 June 17, 1999.

TRD-9903618
Dudley M. Thomas
Director
Texas Department of public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424–2135

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Chapter 14. School Bus Transportation

Subchapter A. General Provision

37 TAC §14.1, §14.2

The Texas Department of Public Safety adopts amendments to §14.1 and §14.2, concerning school bus transportation, without changes to the proposed text as published in the March 19, 1999 issue of the *Texas Register* (24 TexReg 1979) and will not be republished.

The justification for these sections will be the employment of eligible school bus drivers and uniformity of forms used to determine eligibility and administrate the School Bus Driver Safety Training Program.

The amendments are necessary to correct minor errors and remove obsolete regulations from the rules and allow them to conform to applicable state laws and federal regulations. These amendments will clarify the agency's statutory authorities and will provide current forms to determine eligibility standards for school bus drivers and administrate the school bus driver safety training program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 1999.

TRD-9903619
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424-2135

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Subchapter B. School Bus Driver Eligibility and Application Procedures

37 TAC §§14.11-14.14

The Texas Department of Public Safety adopts amendments to §§14.11-14.14, concerning School Bus Driver Eligibility and Application Procedures, without changes to the proposed text as published in the *Texas Register* (24 TexReg 1981) and will not be republished.

The justification for the sections will be the employment and training of eligible school bus drivers and uniformity of forms used to determine eligibility.

The amendments are necessary to correct minor errors and remove obsolete regulations to the rules and allow them to conform to applicable state laws and federal regulations. These amendments will clarify and provide current regulations to determine eligibility standards for school bus drivers and administrate the School Bus Driver Safety Training Program.

One comment was received regarding §14.12 relating to physical examinations. Linda Woolbert representing the Coalition for Nurses in Advanced Practice was concerned with proposed legislation that would allow advanced nurse practitioners to perform physical exams as part of the school bus driver physical examination.

The department's response is that if legislation were passed to allow other health professionals to perform these exams, the section and forms would be amended at that time.

No other comments were received regarding adoption of the amendments.

The amendments are proposed pursuant to Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 1999.

TRD-9903620
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424-2135

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Subchapter C. School Bus Driver Safety Training Program

37 TAC §§14.31-14.34, 14.36

The Texas Department of Public Safety adopts amendments to §§14.31-14.34, and 14.36, concerning the School Bus Driver Safety Training Program, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1984) and will not be republished.

The justification for the sections will be the employment and uniform safety training of eligible school bus drivers across the state.

The sections set forth the requirements of the School Bus Driver Safety Training Program curriculum and administrative procedures.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School bus Driver Safety Training Program requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 1999.

TRD-9903621
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424-2135

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Subchapter D. School Bus Lighting and Warning Device Equipment

37 TAC §14.51, §14.52

The Texas Department of Public Safety adopts the repeal of §14.51 and §14.52, concerning lighting and warning device equipment specifications for school buses, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1986).

The sections are being repealed with the simultaneous filing of new sections which will comply with Texas Education Code, §34.003, as amended by the 75th Texas Legislature, 1997.

No comments were received regarding repeal of the sections.

The repeals are adopted pursuant to Texas Transportation Code, §547.102, which authorizes the Texas Department of Public Safety to adopt standards and specifications which apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and

operate a safer school bus transportation system and make the school bus a safer and highly identifiable vehicle on the road.

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 June 17, 1999.

TRD-9903622
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424-2135

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The Texas Department of Public Safety adopts new §14.51 and §14.52, concerning lighting and warning device equipment specifications for school buses, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1986) and will not be republished.

The justification for the sections will be the ability to clearly identify a school bus and maintain minimum uniform lighting and warning device equipment standards on school buses to increase the safety of students transported.

The new sections set forth the school bus lighting and safety warning equipment required to be maintained on the school bus and the maintenance standard to be followed.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Transportation Code, §547.102, which authorizes the Texas Department of Public Safety to adopt standards and specifications which apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and operate a safer school bus transportation system and make the school bus a safer and highly identifiable vehicle on the road.

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 June 17, 1999.

TRD-9903623
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424-2135

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Chapter 15. Drivers License Rules

Subchapter B. Application Requirements - Original, Renewal, Duplicate, Identification Certificates

37 TAC §15.30

The Texas Department of Public Safety adopts the repeal of §15.30, concerning Identification Certificates, without changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2632) and will not be republished.

The justification for the repeal will be to allow for the adoption of new section §15.30 which will provide more positive identification of license and certificate holders.

The department received no comments on the proposed repeal.

The repeal is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 1999.

TRD-9903615
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 424-2135

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The Texas Department of Public Safety adopts new §15.30, concerning Identification Certificates, without changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2632) and will not be republished.

The justification for the new section will be more positive identification of license and certificate holders.

The new section will be compatible with §15.23 (relating to Names) and §15.24 (relating to Identification of Applicants) and provides for better, more positive identification of applicants for Texas driver's licenses and identification certificates.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 1999.

TRD-9903616
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 424-2135

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Chapter 16. Commercial Driver's License

Subchapter A. Licensing Requirements, Qualifications, Restrictions, and Endorsements

37 TAC §§16.1, 16.2, 16.9, 16.10, 16.13

The Texas Department of Public Safety adopts amendments to §§16.1, 16.2, 16.9, 16.10, and 16.13, concerning licensing requirements, qualifications, restrictions, and endorsements, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1987) and will not be republished.

The justification for the amendments is clarification of department policy and rules that are consistent with state statutes and regulations.

Sections 16.1, 16.2, and 16.9 are amended for clarification of statute. Amendment to §16.10(a) adds new paragraphs (6)-(11) which includes an additional group of drivers of commercial vehicles who are exempt from the requirements relating to age, language, vision, and physical condition. Amendment to §16.13 is necessary to clarify and omit unnecessary language in the existing rule relating to farm-related service industry waivers.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, Chapter 522, §522.005 which provides the department may adopt rules necessary to carry out this chapter and the federal 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 June 17, 1999.

TRD-9903624
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424–2135

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Subchapter B. Application Requirements and Examinations

37 TAC §§16.32, 16.34, 16.38, 16.43, 16.47–16.49, 16.52

The Texas Department of Public Safety adopts amendments to §§16.32, 16.34, 16.38, 16.43, 16.47-16.49, and 16.52, concerning Application Requirements and Examinations, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1989) and will not be republished.

The justification for the amendments will be to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles and ensuring that applicants are properly tested and approved.

Amendment to §16.32 states the CDL-1 is required only for original applicants. Amendment to §16.34 and §16.38 deletes unnecessary language. Amendment to §16.43 deletes subsection (g) as it is no longer applicable. Amendment to §16.47 better defines a school bus and deletes subsection (c) as it no longer applies. Amendment to §16.48 deletes "turn signals" as a safety inspection item and renumbers the remaining paragraphs. Amendment to §16.49 adds paragraphs (1)-(59) which lists those items included in the pre-trip inspection. Amendment to §16.52 describes the type of inquiry the department will perform upon acceptance of a sworn application and documents from an applicant applying for a commercial driver's license.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, Chapter 522, §522.005, which provides the department may adopt rules necessary to carry out this chapter and the federal 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 June 17, 1999.

TRD-9903625
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424–2135

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Subchapter C. Change of License Status, Renewals, Surrender of License, Fees

37 TAC §§16.71, 16.74–16.77

The Texas Department of Public Safety adopts amendments to §§16.71, and 16.74-16.77, concerning change of license status, renewals, surrender of license, and fees, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1991) and will not be republished.

The justification for the amendments will be to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles and ensuring that applicants are properly tested and approved.

The amendments to the sections explain the new fees and procedures required for obtaining a commercial driver's license, renewing these licenses, the surrendering of these licenses, and adding/changing classification, restrictions, and endorsements on commercial driver licenses.

No comments were received regarding adopting of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §522, §522.005, which provides the department may adopt rules necessary to carry out this chapter and the federal 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 June 17, 1999.

TRD-9903626
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424–2135

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Subchapter D. Sanctions and Disqualifications

37 TAC §§16.91, 16.93–16.102, 16.105

The Texas Department of Public Safety adopts amendments to §§16.91, 16.93-16.102, and 16.105, concerning sanctions and disqualifications, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1992) and will not be republished.

The justification for the amendments will be to keep unsafe drivers and vehicles from operating on Texas highways.

The amendments are necessary in order to correct reference to statutes due to the recodification of Texas Civil Statutes to Texas Transportation Code. The titles of §§16.95, 16.96, and 16.102 are also changed in order to correct the reference to Texas Transportation Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, Chapter 522, §522.005, which provides the department may adopt rules necessary to carry out this chapter and the federal 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 June 17, 1999.

TRD-9903627
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: July 7, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 424–2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 44. Community Care for Aged and Disabled Project CHOICE

The Texas Department of Human Services (DHS) adopts new §§44.1, 44.101-44.104, 44.201-44.207, without changes to the proposed text published in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3189). The sections are in new Chapter 44, concerning Community Care for Aged and Disabled Project CHOICE, which consists of two client services components of a grant received by the Texas Health and Human Services Commission for Project CHOICE (Consumers Have Options for Independence in Community Environments) from the federal Health Care Financing Administration.

The justification for the new chapter is to allow DHS to implement two pilot programs: the Transition to Life in the Community (TLC) program and presumptive eligibility services.

The rules regarding the Transition to Life in the Community (TLC) program are being adopted because individuals living in nursing facilities often do not have adequate savings to pay the costs of reestablishing a community residence. The TLC program will facilitate the reestablishment of community residences for individuals living in nursing facilities who have been accepted into certain community based waiver programs by providing transition grant funds with which an individual can make initial rent and deposit payments, purchase household items, or pay other expenses related to moving to the community.

The rules regarding the presumptive eligibility program of Project CHOICE pilot program are being adopted to test the strategy of using presumptive eligibility determinations to promote the delivery of services in community settings to individuals who are at risk of institutional placement. The rules were written to be consistent with the grant application submitted to the federal Health Care Financing Administration. The rules will have the effect of allowing the Department of Human Services staff to authorize services while some verifications are pending and of guaranteeing payment to service providers for services authorized and delivered based on a presumptive eligibility determination.

The new chapter will function by making additional resources available to help individuals in institutional settings to move to community settings, and that some community-based services may be initiated more quickly to individuals who appear to meet all eligibility criteria by deferring verifications.

No comments were received regarding adoption of the new chapter.

Subchapter A. Definitions

40 TAC §44.1

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 June 15, 1999.

TRD-9903564
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 5, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 438-3765

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Subchapter B. Transition to Life in the Community Program

40 TAC §§44.101-44.104

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 June 15, 1999.

TRD-9903565
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 5, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 438-3765

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Subchapter C. Presumptive Eligibility Through the Project CHOICE Program

40 TAC §§44.201-44.207

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 June 15, 1999.

TRD-9903566
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 5, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 438-3765

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Part II. Texas Rehabilitation Commission

Chapter 104. Informal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services

40 TAC §104.5

The Texas Rehabilitation Commission (TRC) adopts an amendment to §104.5, concerning Informal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services, without changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3692) and will not be republished.

The section is amended to replace the word "opinion" with "decision" in subsection (k)(1) and (C).

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 June 16, 1999.

TRD-9903585
Roger Darley
Deputy General Counsel
Texas Rehabilitation Commission
Effective date: July 6, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 424–4621

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Department of Banking

Title 7, Part II

The Texas Department of Banking files this notice of intention to review Texas Administrative Code, Title 7, Chapter 15, Subchapters C through G, comprised of §§15.41-15.42, regarding Bank Offices; §§15.61-15.62, regarding Trust Company Applications; §15.81, regarding Change of Control Applications; §§15.101-15.117, regarding Mergers and Acquisitions; and §§15.121-15.122, regarding Charter Amendments and Certain Changes in Outstanding Stock. This review is undertaken pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review is scheduled for the Finance Commission meeting on August 20, 1999.

The department is aware that amendments to many of these rules are necessary as a result of recent legislation. In particular, Act approved May 29, 1999 (House Bill 2066), 76th Legislature, Articles 1-7, effective September 1, 1999, relating generally to interstate banking and branching, enacts new Finance Code, Title 3, Subtitle G (Chapters 201-204), and also extensively amends Texas Civil Statutes, Article 342a-1.001 et seq (the Texas Trust Company Act), to enable interstate fiduciary transactions. Corporate applications and filing fees must be revised to address interstate acquisitions and branching in both the banking industry and the trust company industry. Further, Act approved May 10, 1999 (Senate Bill 1368), 76th Legislature, §7.16, effective September 1, 1999, relating to nonsubstantive codification, codifies the Texas Trust Company Act as new Finance Code, Title 3, Subtitle F (Chapters 181-186 and 199). The citation complexities created by source law that is amended simultaneously with its codification require clarifying explanations in the sections under review. The department will be proposing amendments to address these two new acts within the next few months.

Any questions or written comments pertaining to this notice of intention to review should be directed to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas, 78705, or by e-mail to everette.jobe@banking.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission. Everette D. Jobe Certifying Official Texas Department of Banking

TRD-9903762
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: June 23, 1999

♦ ♦ ♦

Department of Information Resources

Title 1, Part X

The Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision, or repeal, Title 1, Texas Administrative Code, Chapter 201, §201.15, "Charges for Copies of Public Records." This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167. The review will include, at a minimum, an assessment by DIR as to whether the reasons for adopting or readopting these rules continue to exist.

Any questions or written comments pertaining to this rule review may be submitted to C. J. Brandt, Jr., General Counsel, P.O. Box 13564, Austin, Texas, 78711, via facsimile at (512) 475-4759, or via e-mail at . The deadline for comments is 30 days after publication in the *Texas Register*. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-9903604
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Filed: June 17, 1999

♦ ♦ ♦

Texas Juvenile Probation Commission

Title 37, Part XI

The Texas Juvenile Probation Commission files this notice of intention to review §341.1 Establishing Code of Ethics for Juvenile Probation Services Personnel and Providing for Enforcement of Code; §341.2 Local Juvenile Board Administration; 341.3 Juvenile Probation Services; 341.4 Juvenile Probation Personnel; 341.5 Local Juvenile Boards-Advisory Councils; 341.6 State Administration; 341.7 Waiver to Standards; 341.8 Vehicle Exemption; 341.9 Guidelines for Informal Adjustment Fees; 341.10 Complaints Against Juvenile Boards.

As a part of this review process, the Commission may propose amendments. If proposed, amendments will be found in the Proposed Rules section of the *Texas Register*. The Commission will accept comments within 30 days after publication of this notice to review on the §167 requirement as to whether the reason for adopting the rules continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Erika Sipiora, Staff Attorney Legal & Legislative Affairs Division, Texas Juvenile Probation Commission, 4900 North Lamar Austin, Texas, 78758 or at voice telephone (512) 424-6739 or email at Erika.Sipiora@tjpc.state.tx.us.

TRD-9903603
Vicki Spriggs
Executive Directors
Texas Juvenile Probation Commission
Filed: June 16, 1999

♦ ♦ ♦

Texas Lottery Commission

Title 16, Part IX

The Texas Lottery Commission files this notice of intention to review Title 16, Chapter 403 (relating to General Administration) pursuant to the General Appropriations Act, House Bill 1, Article IX, §167, passed by the 75th Legislature (1997), and the Review Plan previously filed by the commission.

The commission will accept comments regarding whether the reason for adopting or readopting §403.101, as found in Title 16, Chapter 403, of the Texas Administrative Code, continues to exist. The deadline for the comments is 30 days after this publication in the *Texas Register*. Any proposed changes to the rule as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

Any questions or written comments pertaining to this notice of intention to review 16 TAC §403.101 should be directed to Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas, 78761-6630 or by fax at (512) 344-5189.

TRD-9903759
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 23, 1999

♦ ♦ ♦

Texas State Board of Medical Examiners

Title 22, Part IX

The Texas State Board of Medical Examiners proposes to review Chapter 164 (§164.1), concerning Advertising, pursuant to the Appropriations Act of 1997, House Bill, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903666
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 165 (§§165.1-165.3), concerning Medical Records, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903667
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 167 (§§167.1-167.3), concerning Reinstatement, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

The Texas State Board of Medical Examiners is contemporaneously proposing new §§167.4-167.6 elsewhere in this issue of the Texas Register.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903668
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 168 (§168.1), concerning Persons With Criminal Backgrounds, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903669
Bruce A. Levy, M.D., J.D.
Executive Director

Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 169 (§§169.1-169.8), concerning Authority of Physicians to Supply Drugs, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903670
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 179 (§§179.1-179.6), concerning Investigation Files, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

The Texas State Board of Medical Examiners is contemporaneously proposing an amendment to §179.2 elsewhere in this issue of the Texas Register.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903671
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 180 (§180.1), concerning Rehabilitation Orders, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903672
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 188 (§188.1), concerning Complaint Procedure Notification, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903673
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 190 (§190.1), concerning Disciplinary Guidelines, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903674
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 191 (§§191.1-191.5), concerning District Review Committees, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903675
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 196 (§§196.1-196.5), concerning Voluntary Surrender of a Medical License, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903676
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 198 (§198.1), concerning Unlicensed Practice, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The agency's reason for adopting the rule contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-9903677
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 21, 1999

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) proposes the review of 30 TAC Chapter 119, concerning Control of Air Pollution from Carbon Monoxide (CO). This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The General Appropriations Act, Article IX, §167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedures Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. Chapter 119 requires the incineration of vent gas streams from blast furnaces, iron cupolas, and catalyst regeneration units for the purpose of controlling emissions of CO. The chapter applies only in Aransas, Bexar, Brazoria, Calhoun, Dallas, El Paso, Galveston, Harris, Jefferson, Matagorda, Montgomery, Nueces, Orange, San Patricio, Travis, Victoria, Hardin, and Tarrant Counties.

The commission has reviewed the rules in Chapter 119 and determined that a need for those rules no longer exists. Through a search of the emission inventory (EI) database, the commission has determined that, with one exception, sources that are the subject of this rule are either subject to more restrictive air pollution control conditions of new source review permits or, in the case of blast furnaces, no longer exist. The EI data indicates that there is a single iron cupola in Harris County emitting approximately 15 tons per year of CO. Due to the small size of the source, the incineration is not required for the reduction of CO to protect public health from air pollution.

Additionally, the vent gas incineration method required by Chapter 119 is an ineffective method of CO control for catalyst regeneration units, and produces nitrogen oxides (NO_x). NO_x is a precursor gas to ozone formation, and the commission is implementing a policy of NO_x control in those areas of the state failing to meet the National Ambient Air Quality Standards for ozone. Sources under the air pollution control conditions of permits are required to use CO control technology which reduces CO while limiting the production of NO_x. Certain sources, such as catalyst regeneration units, also remain subject to the CO emission limitations in 40 Code of Federal Regulations (CFR) §60.103, but not to a specific and ineffective control method as specified in Chapter 119.

The control method specified in Chapter 119 requires incineration of CO containing waste gas at 1,300 degrees Fahrenheit. This temperature is not high enough to convert the CO to CO_2. The minimum temperature required to begin the combustion of CO is 1,400 degrees. Therefore, the requirements of Chapter 119 do not result in any significant decrease in CO, but do produce NO_x. The commission concludes that the control requirements of Chapter 119 are not necessary to protect the air resources of the state; accordingly, the commission has determined that the chapter can be safely repealed without creating a threat to public health.

Any new source that would be a significant producer of CO will be subject to the air pollution control requirements of either new source review or prevention of significant deterioration permitting and would be subject to 40 CFR §60.103.

The commission concurrently proposes to repeal Chapter 119 in the Proposed Rules section of this issue of the *Texas Register*. This repeal is proposed as a result of the commission's review of the rule, and is based on the commission's determination, as required by the General Appropriations Act, Article IX, §167, 75th Legislature, that a need for the rule no longer exists.

Comments on the commission's review of Chapter 119 and its proposed repeal may be mailed to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 98035-119-AI. Comments must be received by August 2, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

TRD-9903629
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 17, 1999

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The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the review of the rules in 30 Texas Administrative Code (TAC) Chapter 333, concerning Voluntary Cleanup Programs. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The General Appropriations Act, Article IX, §167, requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed Chapter 333 and determined that the reason for their adoption continues to exist.

These rules are necessary to effectively administer, manage, and implement the Brownfields Initiatives (Subchapter A - Voluntary Cleanup Programs and Subchapter B - Innocent Owner/Operator Certification) in the state. These rules provide for the implementation and clarification of requirements set forth in the Voluntary Cleanup Program (VCP) and Innocent Owner/Operator Program (IOP) laws. The VCP rules establish procedures for the VCP including eligibility, public participation, partial cleanups, and effects on other program areas, and the IOP rules establish procedures for the IOP including eligibility, application requirements, information provided by adjacent owners/operators, withdrawal/denial of a certificate, and access.

The commission believes the rules affecting the VCP and IOP meet the commission's regulatory reform goals of clear succinct standards that establish appropriate administrative procedures, important flexibility, and necessary interpretation of statutory requirements. Therefore, the commission is not proposing any amendments to Chapter 333 as part of this rules review. In a separate action, however, the commission notes that amendments to Chapter 333, Subchapter A, were proposed on March 26, 1999 (24 TexReg 2186) to conform with the proposed Texas Risk Reduction Program (TRRP). If adopted, the proposed TRRP rule would guide the investigation, development of

cleanup levels, and response actions for most remediations conducted under the agency's Office of Waste Management. The comment period for the proposed amendments to Chapter 333, Subchapter A, closed May 11, 1999.

A public hearing on this proposal will be held on July 13, 1999, at 10:00 a.m. in Room 254S of Texas Natural Resource Conservation Commission, Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Comments on the commission's review of the rules may be submitted to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99005-333-WS. Comments must be received by 5:00 p.m., August 2, 1999. For further information, please contact Charles Epperson, Voluntary Cleanup Program, (512) 239-2498.

TRD-9903684
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 21, 1999

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Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part IV

The Employees Retirement System of Texas has reviewed §73.15, concerning Proportionate Retirement Program - Benefits, in accordance with the Appropriations Act, Article IX, §167, and has determined that the reason for adopting the rule continues to exist.

The proposed review was published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3546).

No comments were received regarding this review.

As a result of the review, however, the rule is being amended in order to delete subsection (a). Please refer to the Adopted Rules Section for more information regarding this adopted amendment.

TRD-9903686
William S. Nail
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: June 21, 1999

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Texas Natural Resources Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) adopts the review of Chapter 70, concerning Enforcement. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review was published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 608).

The commission readopts Chapter 70, concerning Enforcement, as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continue to exist. The commission has reviewed the rules in Chapter 70 and determined that the reasons for adopting these rules continue to exist. The rules are necessary to establish the procedures whereby enforcement matters are handled by the commission. Enforcement is an essential tool to maintaining compliance of regulated entities and is specifically provided for by the Texas Legislature in Texas Water Code, §7.002.

The commission concurrently adopts amendments to §§70.2, 70.5, 70.7-70.11, 70.51, 70.101, 70.102, and 70.104-70.106 in the Adopted Rules section of this issue of the *Texas Register*. The changes implement state statutory requirements. These changes are adopted as a result of the commission's review of the rules, and primarily address the commission's regulatory reform goals. In addition, changes are adopted which would clarify the rules to make them more clearly consistent with applicable state statutes and the Texas Rules of Civil Procedure. The specific changes are noted in the proposed rule preamble.

The comment period for the review closed on March 1, 1999. No comments were received on the proposed notice of review.

TRD-9903638
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 17, 1999

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Texas Department of Public Safety

Title 37, Part I

The Texas Department of Public Safety (DPS) has completed the review of Chapter 4, Capitol Police; Chapter 14, School Bus Transportation; and Chapter 16, Commercial Driver's License. Pursuant to the requirements of §167 of the Appropriations Act the DPS readopts the following: Chapter 4: §§4.2-4.10, and §§4.31-4.46; Chapter 14: §14.35; and Chapter 16: §§16.3-16.8, 16.11, 16.12, 16.31, 16.33, 16.35-16.37, 16.39-16.42, 16.44-16.46, 16.50, 16.51, 16.53-16.55, 16.72, 16.73, 16.78, 16.92, 16.103, and 16.104.

The proposed review was published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2032).

The DPS received no comments as to whether the reason for adopting the rules continues to exist. The DPS finds that the reason for adopting these rules continues to exist.

As part of this review process, the DPS proposed amendments to the following sections as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1978). The DPS proposed amendments to Chapter 4, §4.1. Amendments to Chapter 14 included §§14.1, 14.2, 14.11-14.14, 14.31-14.34, 14.36, 14.51, and 14.52. Amendments to Chapter 16 included §§16.1, 16.2, 16.9, 16.10, 16.13, 16.32, 16.34, 16.38, 16.43, 16.47-16.49, 16.52, 16.71, 16.74-16.77, 16.91, 16.93-16.102, and 16.105.

One comment was received concerning Chapter 14, §14.12. The commenter was concerned with proposed legislation that would allow advanced nurse practitioners to perform physical exams as part of the school bus driver physical examination. The department's response is that if legislation were passed to allow other health professionals

to perform these exams, the section and forms would be amended at that time. No other comments were received. The DPS finds that the reason for adopting these rules continues to exist.

TRD-9903617
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: June 17, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure: 22 TAC 183.13 (a)(11) Texas State Board of Medical Examiners (page 1)

Form to be Completed by Patient, Notifying the Acupuncturist of Whether He/She

Has Been Evaluated by a Physician, and Other Information.

(Pursuant to the requirements of 22 TAC §183.7 (e) and Section 6.11, Subsections (b) through (d), V.A.C.S., article 4495b, governing the practice of acupuncture.)

I (patient's name) _____, am notifying the acupuncturist (practitioner's name), _____ of the following:

___ Yes ___ No I have been evaluated by a physician or dentist for the condition being treated within twelve [six] months before the acupuncture was performed. I recognize that I should be evaluated by a physician for the condition being treated by the acupuncturist.

_____ (initials of patient) Date: _____

___ Yes ___ No I have received a referral from my chiropractor within the last 30 days for acupuncture.

After being referred by a chiropractor, if after 120 [30] days or 30 [20] treatments, whichever comes first, no substantial improvement occurs in the condition being treated, I understand that the acupuncturist is required to refer me to a physician. It is my responsibility and choice whether to follow this advice.

Signature _____ Date _____

Figure: 22 TAC 183.13(a)(11) Texas State Board of Medical Examiners (page 2)

Form to be Completed by Patient,

Attesting that the Acupuncturist Has Referred Him/Her

(Pursuant to the requirement of 22 TAC §183.7 (e) and Section 6.11, Subsection (d), V.A.C.S., article 44 95b, governing the practice of acupuncture.)

The acupuncturist has referred me to see a physician. It is my responsibility and choice whether to follow his advice.

Patient's signature _____ Date _____

Acupuncturist's signature _____ Date _____

Figure: 40 TAC §19.2112(f)

NURSING FACILITY REQUIREMENTS	Maximum Amount of Penalties			
	$1000	$2500	$5000	$10,000
§19.201, Licensure Application		X		
§19.301, Construction			X	
§19.401, Resident Rights	X			
§19.401, Resident Rights with Violation of Quality of Life or Care				X
§19.601, Resident Behavior				X
§19.701, Quality of Life				X
§19.801, Resident Assessment			X	
§19.901, Quality of Care				X
§19.1001, Nursing				X
§19.1101, Dietary				X
§19.1201, Physician			X	
§19.1301, Rehabilitation			X	
§19.1401, Dental Services		X		
§19.1501, Pharmacy Services				X
§19.1601, Infection Control				X
§19.1701, Physical Plant			X	
§19.1901, Administration			X	
§19.2006, Reporting Incidents		X		

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse, through its Regional Advisory Consortia, will hold public hearings in each Health and Human Services region to solicit input on the Strategic Plan, Statewide Service Delivery Plan, and intended use of Block Grant. Comments will be directed to the long term goals of the agency and how to best coordinate and deliver substance abuse related services.

Public hearings have been scheduled for the following dates, times and places:

Tuesday, July 20, Region 5

- Foundation for SE Texas, 700 N. Street, Beaumont, Texas, 6:00 p.m. - 8:00 p.m.

Wednesday, July 21, Region 5

- Angelina County Chamber of Commerce, 1615 South Chestnut, Lufkin, Texas, 10:00 a.m. - 1:00 p.m.

Friday, July 23, Region 6

- Houston Council Building, 303 Jackson Hill, Houston, Texas, 10:00 a.m. - 2:00 p.m.

Thursday, August 12, Region 9

- Permian Basin Regional Planning Commission, 2910 LaForce Blvd., Midland, Texas, 10:00 a.m. - 12:00 noon.

Friday, August 13, Region 7

- TCADA, 9001 North IH 35, Suite 105, meeting rooms 1-3, Austin, Texas, 1:00 p.m. - 3:00 p.m.

Friday, August 13, Region 10

- Ysleta ISD Central Office, Cultural Arts Center, 9600 Simms Street, Cristo Rey Room, El Paso, Texas, 4:00 p.m. - 6:00 p.m.

Representatives from the commission will be present to explain the planning process and members of the Regional Advisory Consortium along with commission staff will be present to consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in preparation of the Strategic Plan, Statewide Services Delivery Plan, and Block Grant Application.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Albert Ruiz at (800) 832-9623, extension 6607 or Stella Roland at extension 6967, ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Albert Ruiz or Stella Roland 9001 North IH 35, suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6607 or 6967.

TRD-9903738
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: June 22, 1999

♦ ♦ ♦

Office of the Attorney General

Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County and State of Texas acting by and through the Texas Natural Resource Conservation Commission v. Eli Sasson, Case Number 98-05996, in the District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant is the owner of a mobile home park which is located at 14115 F.M. 529, Harris

County, Texas which is allegedly in violation of its wastewater discharge permit. Defendant has allegedly caused, suffered, allowed, or permitted the discharge of waste in violation of the Texas Water Code and TNRCC permit 11414-001. Remediation of the mobile home park violations is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The judgment permanently enjoins Defendant to comply with each and every limit and condition of Permit Number 11414-001 for the wastewater treatment plant that serves West Houston Mobile Home Park. Defendant shall pay $58,000 in civil penalties, $7,000 in attorney fees and $184 in court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Leela R. Fireside, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9903653
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 18, 1999

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Coastal Bend Workforce Development Board

Re-Issuance of Request for Proposals

The Coastal Bend Workforce Development Board (the Board), which is responsible for the management of workforce development resources in the Coastal Bend region, is soliciting proposals for services funded through the Texas Workforce Commission under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and State matching funds.

Using the Request for Proposals (RFP) method of procurement, the Board is hereby re-issuing the solicitation of proposals from qualified organizations for the management and operation of Direct Child Care Delivery Services (DCCDS). Services under this contract will be provided in the Coastal Bend region, which consists of twelve area counties, including Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, and San Patricio.

A Pre-Proposal Conference will be held beginning at 2:00 p.m., Thursday, June 24th to share information and answer questions concerning the RFP. The conference will be held at the Holiday Inn Airport, 5549 Leopard Street, Corpus Christi, Texas, and may last approximately two hours.

Interested parties may obtain one copy of the RFP package(s) by calling Mike Hefley at (361) 889-5330, ext.106.

The deadline for the receipt of proposals is 4:00 p.m., Wednesday, July 21, 1999. Proposals received after the deadline will not be considered.

For profit and non-profit entities, community-based organizations, school districts, colleges, universities, as well as other training organizations may submit proposals. The Board is an Equal Opportunity employer/program. Minority, disadvantaged and women's businesses are encouraged to apply. Auxiliary aids and services are available upon request to individuals with disabilities. Telephone access is available through (TDD) 1-800-RELAY-TX, Voice 1-800-RELAY WW.

TRD-9903696
Carlos A. Herrera
President and CEO
Coastal Bend Workforce Development Board
Filed: June 21, 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 June 10, 1999, through June 18, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Hoechst Celanese; Location: The project site is in the Bayport Turning Basin, at the Hoechst Celanese facility, at 11807 Port Road, in Seabrook, Harris County, Texas. The U.S.G.S. quad map is League City; CCC Project Number 99-0223-F1; Description of Proposed Action: The applicant requests a 10 year extension of time to perform maintenance dredging in front of their main dock and a barge dock area. The original permit, issued on August 26, 1996, authorized the maintenance dredging of a 40,625 square-foot barge dock area to a depth of -18 feet mean sea level (MSL) and the maintenance dredging of a 92,000 square-foot area in front of the main dock to a depth of -42 feet MSL; Type of Application: U.S.A.C.E. permit application number 20684(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Chambers-Liberty Counties Navigation District; Location: The project site is located in the Anahuac Harbor, off of the Trinity River, at the end of Miller Avenue, in Anahuac, Chambers County, Texas; CCC Project Number 99-0224-F1; Description of Proposed Action: The applicant proposes to construct a 120-by 6-foot boat dock. The applicant also requests authorization to perform maintenance dredging on the designated dock area for a period of 10 years. The area around the boat dock will be dredged to a depth of -6 feet mean high tide. Approximately 850 cubic yards of dredge material will be obtained during the initial dredging operation. Approximately 275 cubic yards of the material will be used to fill the canoe launch area. The remainder of the dredge material, approximately 575 cubic yards, will be placed on adjacent upland areas located on the applicant's property; Type of Application: U.S.A.C.E. permit application number 21685 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495,

or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9903748
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 23, 1999

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Notice of Public Meetings

The Texas General Land Office (GLO) will hold public meetings to gather input on the Coastal Erosion Planning and Response Act, which provides $15 million over the next two years for coastal erosion projects. It authorizes the GLO to implement a comprehensive coastal erosion response program that can include designing, funding, building, and maintaining erosion projects alone or in partnership with other governmental and non-governmental entities.

The agenda for each meeting being held consists of the following topics:

I. Summary of Texas Coastal Erosion Legislation

II. Presentation of Coastal Erosion Rates and Status

III. Presentation on Coastal Infrastructure Threatened by Erosion

IV. Explanation of Project Funding - Local, State, and Federal

V. Process for Project Selection -Proposed Criteria, Prioritization, and Identification of Projects

VI. Questions and Answers

VII. Closing Remarks

The locations and times for the public hearings are as follows:

Tuesday, July 6, 1999:

Corpus Christi, 6-9 p.m., Texas A&M University-Corpus Christi; Oso Room - University Center; 6300 Ocean Drive.

Wednesday, July 7, 1999:

Port Aransas, 4-6 p.m., University of Texas Marine Science Institute; Visitors Center Auditorium; 750 Channel View Drive.

Rockport, 7-9 p.m., Aransas County Courthouse; District Courtroom; 301 N. Live Oak.

Thursday, July 8, 1999:

Freeport, 6-9 p.m., Freeport Community House; 1300 W. 2nd Street.

Friday, July 9, 1999:

Port Arthur ; 6-9 p.m., McKee Tower, Community Room, 3rd Floor; 4749 Twin City Highway.

Monday, July 19, 1999:

Clear Lake, 6-9 p.m., University of Houston-Clear Lake; Bayou Building, Room 1313.

Tuesday, July 20, 1999:

Baytown, 6-9 p.m., Lee College; Science Building - Room113; Corner of Lee Drive and Gulf Street.

Wednesday, July 21, 1999:

Port Lavaca, 6-9 p.m., Agriculture Building Auditorium; Calhoun County Fairgrounds; County Road 101.

Thursday, July 22, 1999:

Crystal Beach (Bolivar), 6-9 p.m., Eagle Hall; Highway 87.

Friday, July 23, 1999:

Galveston, 6-9 p.m., University of Texas Medical Branch-Galveston; Levin Hall Auditorium.

Monday, July 26, 1999:

Brownsville, 4-6 p.m., Cameron County Courthouse; Administration Building., 4th Floor; 964 E. Harrison St.

South Padre Island, 7-9 p.m., SPI Convention Centre; 7355 Padre Boulevard; 2700 Bay Area Boulevard.

For more information, please contact Dorothy Browne at the Texas General Land Office, (512) 475-1468.

TRD-9903747
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 23, 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, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of June 28, 1999 - July 4, 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 June 28, 1999–July 4, 1999 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of July 1, 1999 - July 31, 1999 is 10% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of July 1, 1999 - July 31, 1999 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9903700
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 22, 1999

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Texas Credit Union Department

Application(s) to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a name change was received for Public Service Employees Credit Union, Amarillo, Texas. The proposed new name is Access 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-9903743
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: June 23, 1999

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Interagency Council on Early Childhood Intervention

Request for Proposals

Invitation for Proposals. The Interagency Council on Early Childhood Intervention (ECI) is soliciting proposals from Certified Public Accountants or Certified Internal Auditors with at least two years of experience with state government activities to provide internal auditing services to ECI. The contract is expected to begin September 1, 1999 and will continue through August 31, 2000. The Texas Internal Auditing Act, V.T.C.A., Government Code, §2102.001 which became effective September 1, 1989, details internal auditing responsibilities.

Contact Person. The request for proposal (RFP) is available to all interested providers upon written request to Richard Parker, Interagency Council on Early Childhood Intervention, 4900 North Lamar, Suite 2110, Austin, Texas 78751-2399. A copy may also be obtained by calling (512) 424-6825 or by visiting the ECI office. Questions should be directed to Richard Parker at (512) 424-6825.

Closing Date. All proposals to be considered must be received in the ECI administrative office by 5:00 p.m. on July 30, 1999 or be postmarked by July 29, 1999.

Selection Criteria. The ECI desires services which represent the best combination of price and quality. Selection will be based on the following: experience with state government activities, plan of implementation for providing audit services, and reasonableness of hourly fee and estimated number of hours.

TRD-9903752
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: June 23, 1999

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East Texas Council of Governments

Procurement of Enhanced 9-1-1 Customer Premise Equipment

The East Texas Council of Governments (ETCOG) is pursuing procurement of Enhanced 9-1-1 Customer Premise Equipment. ETCOG, which is managing this project, is releasing this RFP to solicit turnkey proposals for the design, installation, service and maintenance of Enhanced 9-1-1 Public Safety Answering equipment. The project includes replacement of three (3) existing PSAPs. The proposals solicited will be for equipment only. No database or network services are being sought. A bidder must ensure that their installation and cutover plan for the new Enhanced 9-1-1 CPE will not cause an interruption, deviation or degradation of the existing service. ETCOG policy is to lease, but will entertain both purchase and lease options on these PSAPs.

CONTACT:

Anyone wishing to receive a RFP packet please contact Carolyn Flores, 9-1-1 Coordinator at telephone (903) 984-8641 or fax (903) 983-1440.

ETCOG retains the right to make the selection it determines to be the most beneficial to the project and to reject, negotiate changes, or modify in part and in substance the submitted proposal prior to award of the contract. ETCOG also reserves the right to reject any and all proposals submitted and may, at its option, release a revised request for proposals.

DEADLINE:

Proposals shall be accepted until Submission Deadline: July 12, 5 p.m. *NO FAX COPIES WILL BE ACCEPTED.*

TRD-9903645
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: June 18, 1999

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Texas Education Agency

Notice of Correction: Extension of Deadline and Correction of Date of Bidder's Conference

The Texas Education Agency (TEA) published Request for Proposals (RFP) #701-99-013, concerning T-STAR Digital Television Studio, Satellite Uplink, Downlink Equipment, and Transponder Services in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4608). The TEA is amending the *Texas Register* Notice publication date from June 18, 1999, to July 2, 1999. The TEA is also extending the deadline for receiving applications from July 23, 1999, to August 20, 1999. The TEA is also changing the date of the bidders conference from July 8, 1999, to July 29, 1999.

Further Information. For clarifying information about the RFP, contact John Lopez, Division of Instructional Technology, Texas Education Agency, (512) 305-9199.

TRD-9903751
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 23, 1999

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Request for Proposals Concerning Special Education Hearing Officers

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-99-019 from individuals, corporations, and organizations to provide services as

independent hearing officers for administrative hearings brought under the Individuals with Disabilities Education Act (IDEA).

Description. As hearing officers, the selected proposers will preside over administrative hearings concerning the identification, evaluation, or educational placement of students with disabilities or the provision of free and appropriate education to students with disabilities. The hearing officers have authority to administer oaths, call and examine witnesses, make rulings on discovery and dispositive motions, determine admissibility of evidence and amendments to pleadings, maintain decorum, schedule and recess proceedings, and issue final decisions appealable to state or federal district courts.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than September 1, 1999, and an ending date of no later than August 31, 2000.

Project Amount. The selected proposers will be compensated at the hourly rate of $100 and reimbursed for expenses at state rates. Any contracts resulting from this RFP are funded 100% from IDEA-B federal funds.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the proposer. The selected proposers must be attorneys who: (1) are licensed in Texas; (2) are in good standing with the State Bar of Texas; (3) have at least five years of practice; (4) have at least two years of experience in special education law, disability law, administrative law, or civil rights law; (5) possess good research skills; and (6) demonstrate clarity of written expression.

The selected proposers must be independent in that they: (1) cannot be employees of a public agency that is involved in the education or care of students; (2) cannot have any professional or personal interests that would conflict with their objectivity in the hearing; and (3) cannot represent or receive any remuneration from any individual or entity relating to or in connection with any matter relating to or involving TEA, any local education agency or any other public agency responsible for providing education to children with disabilities.

Special consideration will be given to proposers who have served as administrative hearing officers or who have been actively involved in contested administrative cases. Historically underutilized businesses (HUBs) are encouraged to submit a proposal.

The TEA reserves the right to select from the highest ranking proposals those that address all requirements contained in this RFP. The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-99-019 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Sandy Lowe, Office of Legal Services, Texas Education Agency, (512) 463-9720.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Standard Time), Thursday, August 12, 1999, to be considered.

TRD-9903750
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 23, 1999

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General Services Commission

Notice of Corporate Travel Charge Card Services Request for Proposal

The General Services Commission (the "GSC") announces a Request for Proposals ("RFP") for Corporate Travel Charge Card Services (RFP #4-0799CC) to be provided to the State of Texas pursuant to the Texas Government Code, §2171.052. Any contract which results from this RFP shall be for the term of September 1, 1999, through August 31, 2002.

Preproposal Conference: A preproposal conference will be held on Friday, June 25, 1999, in Austin, Texas. The conference is scheduled from 1:30 p.m. to 3:00 p.m. Central Daylight Time at the following address: General Services Commission, Central Services Building, Room 200B, 1711 San Jacinto Blvd., 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 Time, on July 14, 1999, and shall be delivered or sent to: The General Services Commission, Attn: Bid Services, RFP #4-0799CC, 1711 San Jacinto Blvd., Room 180, Austin, Texas 78701, or P.O. Box 13047, 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 chosen for contract award. The proposer to whom a contract is 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-9903644
Judy Ponder
General Counsel
General Services Commission
Filed: June 18, 1999

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled “Location” indicates the city in which the radioactive material may be possessed and/or used. The location listing “Throughout Texas” indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
SAN ANTONIO	GENETEX INC	L05255	SAN ANTONIO	0	06/09/99
THROUGHOUT TEXAS	CITY OF ABILENE	L05254	ABILENE	0	06/14/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
AMARILLO	AMARILLO DIAGNOSTIC CLINIC	L04085	AMARILLO	10	06/07/99
ANDREWS	WASTE CONTROL SPECIALISTS LLC	L04971	ANDREWS	8	06/02/99
BAYTOWN	BAYCOAST MEDICAL CENTER	L02462	BAYTOWN	29	06/10/99
BEAUMONT	R LELDON SWEET MD PA DBA OUTPATIENT CARDIOVASCULAR	L05029	BEAUMONT	3	06/03/99
BEDFORD	HARRIS METHODIST HOSPITAL HEB DIVISION OF RADIOLOGY	L02303	BEDFORD	25	06/07/99
BEDFORD	COLUMBIA NORTH HILLS HOSPITAL SUBSIDARY LP DBA NORTH	L03455	BEDFORD	24	06/08/99
BURNET	DAUGHTERS OF CHARITY HEALTH SERVICES OF AUSTIN	L03515	BURNET	22	06/02/99
CHANNELVIEW	GLOBAL X-RAY & TESTING CORP	L03663	CHANNELVIEW	74	06/14/99
CORPUS CHRISTI	COASTAL REFINING AND MARKETING INC	L01268	CORPUS CHRISTI	21	05/28/99
CORPUS CHRISTI	DRISCOLL CHILDRENS HOSPITAL	L04606	CORPUS CHRISTI	14	06/10/99
FREEPORT	RHODIA RARE EARTHS INC	L02807	FREEPORT	27	05/27/99
HOUSTON	BEN TAUB GENERAL HOSPITAL NUCLEAR MEDICINE	L01303	HOUSTON	48	05/28/99
HOUSTON	WHMC INC DBA WEST HOUSTON MEDICAL CENTER	L02224	HOUSTON	47	06/10/99
HOUSTON	NUONOCOLOGY LABS INC	L04978	HOUSTON	1	06/11/99
LUBBOCK	UNIVERSITY MEDICAL CENTER	L04719	LUBBOCK	26	06/10/99
MESQUITE	MESQUITE COMMUNITY HOSPITAL LP DBA MESQUITE COMMUNITY	L02733	MESQUITE	27	06/10/99
MIDLAND	NORM DECON SERVICES LLC	L04917	MIDLAND	8	05/28/99
NEDERLAND	TENET HEALTHCARE LTD DBA MID JEFFERSON HOSPITAL	L01756	NEDERLAND	34	06/01/99
PASADENA	TECHNICAL WELDING LABORATORY INC	L02187	PASADENA	122	06/09/99
PASADENA	MEMC PASADENA INC	L05129	PASADENA	2	05/28/99
PLANO	ARCO EXPLORATION AND PRODUCTION TECHNOLOGY COMPANY	L00134	PLANO	65	06/03/99
RICHARDSON	BAYLOR RICHARDSON MEDICAL CENTER	L02336	RICHARDSON	26	06/11/99
SAN ANTONIO	BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	83	06/04/99
SAN ANTONIO	BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	84	06/11/99
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO	L00594	SAN ANTONIO	137	06/10/99
SAN ANTONIO	SAN ANTONIO HEALTHCARE SYSTEM OF SAN ANTONIO LTD	L02266	SAN ANTONIO	67	06/09/99
SAN ANTONIO	SOUTHWEST RESEARCH INSTITUTE	L04958	SAN ANTONIO	5	06/02/99
SAN MARCOS	SOUTHWEST TEXAS STATE UNIVERSITY	L03321	SAN MARCO	10	06/08/99
TEXARKANA	MINAKSHI J PATEL FACC	L04738	TEXARKANA	5	06/03/99
TEXARKANA	RED RIVER PHARMACY SERVICES	L05077	TEXARKANA	5	06/07/99
THROUGHOUT TEXAS	COOPERHEAT-MQS INC	L00087	HOUSTON	77	06/03/99
THROUGHOUT TEXAS	TEXAS DEPT OF TRANSPORTATION CONSTRUCTION DIVISION	L00197	AUSTIN	84	05/28/99
THROUGHOUT TEXAS	ALL AMERICAN MAINTENANCE	L01336	SAN ANTONIO	33	06/03/99
THROUGHOUT TEXAS	LONGVIEW INSPECTION INC	L01774	LA PORTE	148	06/09/99
THROUGHOUT TEXAS	WESTHOLLOW TECHNOLOGY CENTER	L02116	HOUSTON	39	06/02/99
THROUGHOUT TEXAS	BJ SERVICES COMPANY USA	L02684	HOUSTON	35	06/08/99
THROUGHOUT TEXAS	NON DESTRUCTIVE INSPECTION CORPORATION	L02712	LAKE JACKSON	65	05/28/99
THROUGHOUT TEXAS	ASOMA INSTRUMENTS INC	L02788	AUSTIN	34	06/02/99
THROUGHOUT TEXAS	GLOBAL X-RAY & TESTING CORP	L03663	CHANNELVIEW	73	06/04/99

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
THROUGHOUT TEXAS	COMPUTALOG WIRELINE SERVICES INC	L04286	FORT WORTH	35	06/04/99
THROUGHOUT TEXAS	QUALITY ASSURANCE SERVICES INC	L04601	GRAND PRAIRIE	14	06/04/99
THROUGHOUT TEXAS	GILES ENGINEERING ASSOCIATES INC	L04919	DALLAS	3	05/28/99
THROUGHOUT TEXAS	PROFESSIONAL SERVICE INDUSTRIES INC	L04939	CORPUS CHRISTI	3	05/28/99
THROUGHOUT TEXAS	PROFESSIONAL SERVICE INDUSTRIES INC	L04944	HARLINGEN	4	06/03/99
THROUGHOUT TEXAS	HI-TECH TESTING SERVICE INC	L05021	LONGVIEW	22	05/28/99
THROUGHOUT TEXAS	ASTEX INC DBA ENVIRONMENTAL CONSULTANTS	L05071	SAN ANTONIO	1	06/03/99
THROUGHOUT TEXAS	GULF COAST INSPECTION INC	L04934	INGLESIDE	9	06/08/99
WAXAHACHIE	BAYLOR ELLIS COUNTY	L04536	WAXAHACHIE	16	06/10/99
WEBSTER	CLEAR LAKE REGIONAL MEDICAL CENTER INC	L01680	WEBSTER	42	06/11/99
WICHITA FALLS	UNITED REGIONAL HEALTH CARE SYSTEM INC	L00350	WICHITA FALLS	68	06/01/99
WICHITA FALLS	UNITED REGIONAL HEALTH CARE SYSTEM INC	L00350	WICHITA FALLS	69	06/10/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
CORPUS CHRISTI	SYNCOR INTERNATIONAL CORPORATION	L04043	CORPUS CHRISTI	22	06/02/99
DALLAS	SYNCOR INTERNATIONAL CORPORATION	L02048	DALLAS	94	06/07/99
DALLAS	STANTECH ENGINEERING CO	L02234	DALLAS	19	06/07/99
DALLAS	DONALD L LEVENE MD FACC	L03817	DALLAS	12	06/09/99
EL PASO	SYNCOR INTERNATIONAL CORPORATION	L01999	EL PASO	89	06/02/99
HOUSTON	UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	66	06/08/99
HOUSTON	SYNCOR INTERNATIONAL CORPORATION	L01911	HOUSTON	103	06/04/99
MAURICEVILLE	S & T INTERNATIONAL INC	L03652	MAURICEVILLE	29	05/28/99
SAN ANTONIO	SYNCOR INTERNATIONAL CORPORATION	L02033	SAN ANTONIO	83	06/08/99
THE WOODLANDS	ENERGY BIOSYSTEMS CORPORATION	L04773	THE WOODLANDS	5	06/08/99
THREE RIVERS	DIAMOND SHAMROCK REFINING AND MARKETING	L03699	THREE RIVERS	10	06/08/99
THROUGHOUT TEXAS	PICKETT JACOBS	L03690	LUFKIN	16	06/07/99
THROUGHOUT TEXAS	INTERNATIONAL RADIOGRAPHY & INSPECTION SERVICES	L04769	OKLAHOMA CITY	8	06/09/99
THROUGHOUT TEXAS	COBBLESTONE ENGINEERING INC	L04789	HARLINGEN	2	06/04/99
VICTORIA	VICTORIA REGIONAL MEDICAL CENTER	L03575	VICTORIA	15	06/09/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
KILGORE	TRACER SERVICE INC	L03526	KILGORE	24	06/14/99
ODESSA	K G JERRY TAYLOR COMPANY	L02488	ODESSA	9	06/03/99
AN ANTONIO	R E L CONSTRUCTION COMPANY INC	L04798	SAN ANTONIO	2	06/03/99
SEGUIN	DATA WIRELINE SERVICES INC	L05088	SEGUIN	1	05/28/99
THE WOODLANDS	BETZDEARBORN INC	L03377	THE WOODLANDS	16	06/03/99

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public

or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756–3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9903651
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Siemens Medical Systems, Inc. (registrant-R06707, expired) of Iselin, New Jersey. A total penalty of $16,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-9903650
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Request for Proposals for Human Immunodeficiency Virus (HIV) Prevention Activities

INTRODUCTION

The Texas Department of Health (department) requests proposals for Human Immunodeficiency Virus (HIV) prevention projects in Region 10 (El Paso, Hudspedth, Culberson, Jeff Davis, Presidio, and Brewster Counties) for the project period January 1, 2000, through December 31, 2001. The department is seeking to select a provider of services to target high priority populations as contained in the 1998 HIV Prevention Regional Action Plan for Region 10. Project proposals will be reviewed and awarded on a competitive basis.

PURPOSE

The purpose of this program is to assist local communities to: prevent the transmission of HIV; reduce associated morbidity and mortality among HIV-infected persons and their partners by enhancing referral to medical, social, and prevention services; initiate needed HIV prevention services according to the 1998 HIV Prevention Regional Action Plans; and complement existing HIV prevention programs.

ELIGIBLE APPLICANTS

Eligible entities include governmental, public or private nonprofit entities located within Texas Region 10 including: city or county health departments or districts, community-based organizations, and public or private hospitals. Individuals are not eligible to apply. Applicants must have experience and/or expertise in working with the target population(s). Entities that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply. Applicants must provide historical evidence of fiscal and administrative responsibility as outlined in the administrative information of the grant instructions.

AVAILABLE FUNDS

Award of these funds is contingent upon annual federal grant awards to the department from the Centers for Disease Control and Prevention. This announcement is made prior to the award of these funds to allow applicants sufficient time to respond to the application due date. Award of these funds is contingent upon satisfactory completion of the grant application and the negotiation process. The projected amount available is approximately $246,228. The department expects to fund one to three projects.

DEADLINE

The original and six copies of the application must be received by the Manager, Grants and Contracts Branch, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, on or before 5:00 p.m., Central Daylight Saving Time, on September 9, 1999. No facsimiles will be accepted.

REVIEW AND AWARD CRITERIA

Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to the quality of the application. Target populations and interventions must be planned in compliance with the HIV Prevention Regional Action Plans for implementation years 1999-2001. Each applicant will receive a copy of the Region 10 Regional Action Plan with the Request for Proposals (RFP). The department reserves the right to make funding decisions based on the need to provide HIV prevention services across geographic areas and to allocate resources based on an analysis of current resources already available in a particular community in order to avoid the duplication of services.

FOR INFORMATION

For a copy of the RFP, and other information, contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (512) 490-2525 or at email: laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to July 9, 1999.

TRD-9903643
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Request for Public Comments Regarding the Women, Infants, and Children Policy and Procedure Manual Amendments

The Texas Department of Health (department) proposes amendments to the Policy and Procedure Manual for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) which is adopted by reference in 25 TAC §31.1 The department proposes this action (1) to comply with the United States Department of Agriculture's Food and Nutrition Service issuance of a final rule governing the WIC Program to mandate uniform sanctions across State WIC agencies for the most serious vendor violations. The implementation of these mandatory sanctions is intended to curb vendor-related fraud and abuse in the WIC Program and to promote WIC and Food Stamp Program (FSP) coordination in the disqualification of vendors and retailers who violate program rules. This final rule also implements a mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which requires the disqualification of WIC vendors who are disqualified from the FSP (reference 7 CFR Part 246); and (2) to set out the penalties for less serious contract/policy violations where discretion has been allowed the state by the United States Department of Agriculture.

All vendors currently under contract with the department as authorized locations to redeem WIC food vouchers will receive a written copy by mail of the proposed policy and procedure changes. Other interested parties may request a copy by contacting Ray Krzesniak, Director, WIC Vendor Operations Division, Bureau of Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, or by phone at (512) 406-0777, facsimile (512) 406-0703, or by E-mail: ray.krzesniak@tdh.state.tx.us. Written comments on the proposed policy and procedure changes may be submitted to Mr. Krzesniak at any of the above addresses including facsimile/E-mail. The deadline for comments is August 12, 1999.

TRD-9903737
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 22, 1999

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Notice of Violation and Proposal to Assess Administrative Penalties to Colorado Fayette Medical Center

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Colorado Fayette Medical Center (registrant-M00492) of Weimar. A total penalty of $4,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-9903649
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Violation and Proposal to Assess Administrative Penalties to Eott Energy Pipeline, Ltd.

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Eott Energy Pipeline, Ltd. of Houston. A total penalty of $5,410 is proposed to be assessed the company for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-9903648
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Violation and Proposal to Assess Administrative Penalties to Global X-Ray and Testing Corporation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Global X-Ray and Testing Corporation, (licensee-L03663) of Aransas Pass. A total penalty of $9,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289 and Texas Regulations for Control of Radiation Part 31.

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-9903647
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 1999

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Notice of Violation and Proposal to Assess Administrative Penalty to Panhandle NDT and Inspection, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Panhandle NDT and Inspection, Inc. (licensee-L02627) of Borger. A total penalty of $18,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289 and Texas Regulations for Control of Radiation Part 31.

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-9903646
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: June 18, 1999

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Health and Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 99-04, Amendment Number 559.

The amendment is in response to Program Memorandum 99-1, regarding the disclosure statement for the post-eligibility reprint. The amendment is effective April 1, 1999.

If additional information is needed, please contact Deborah Hankey, Texas Department of Mental Health and Mental Retardation at (512) 206-5743.

TRD-9903749

Marina S. Henderson

Executive Deputy Commissioner

Health and Human Services Commission

Filed: June 23, 1999

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Texas Department of Housing and Community Affairs

Community Services Section Notice of Public Hearings
Community Services Block Grant

The Community Services Block Grant Act (42 U.S.C.§9901 et seq.) and Texas Government Code, Sections 2306.092(11), 2105.053 and 2105.054, require public hearings on the intended use of federal block grant funds within Texas. The Texas Department of Housing and Community Affairs (TDHCA) will conduct five public hearings as part of the public information consultation and public hearings requirements for the Community Services Block Grant (CSBG), a federal block grant. The primary purpose of these hearings is to solicit public comment on the proposed use and distribution of federal fiscal year (FFY) 2000 funds to operate the Community Services Block Grant and Community Food and Nutrition Program activities.

The public hearings will be held as follows:

Tuesday, July 27, 1999 at the Houston Public Library, 500 McKinney Street, Houston, Texas at 1:30 p.m.

Wednesday, July 28, 1999 at the Carver Library, 1161 Angelina Street, Austin, Texas at 6:00 p.m.

Wednesday, July 28, 1999 at the Harlingen Public Library, 410 76 Drive, Harlingen, Texas, at 2:00 p.m.

Thursday, July 29, 1999, at the South Plains Association of Governments, 1323 58th Street, Lubbock, Texas, at 1:30 p.m.

Thursday, July 29, 1999, at the Center for Community Cooperation, 2900 Live Oak, Dallas, Texas at 10:30 a.m.

A representative of TDHCA will be present to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plans. Intended use Reports may be obtained on or about July 2, 1999 by contacting the Texas Department of Housing and Community Affairs, Administration and Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941. This report may also be downloaded from our website address, www.tdhca.state.tx.us. Questions regarding the report may be directed to Dyna C. Lang, 512-475-3905, or dlang@tdhca.state.tx.us.

Comments on the intended use of funds may be in the form of oral or written testimony at the public hearings. Written comments may also be submitted to TDHCA using the post office box or e-mail address provided above no later than August 13, 1999.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled meeting.

Departamento de Vivienda y Asuntos de la Comunidad de Tejas
La Sección de los Servicios de la Comunidad
Audiencias Públicas
El programa federal de Subsidio de Servicios Comunitarios (CSBG)

El programa federal de Subsidio de Servicios Comunitarios (CSBG) Acto (42 U.S.C.9901 et seq.) y el Código del Gobierno de Tejas, las secciones 2306.092(11), 2105.053 y 2105.54, requieren audiencias públicas en el uso previsto de un subsidio de bloque de fondos federales dentro de Tejas. El Departamento de Vivienda y Asuntos de la Comunidad de Tejas (TDHCA) conducirá cinco audiencias públicas como parte de la consulta pública de la información y las audiencias públicas requeridas por el programa federal de Subsidio de Servicios Comunitarios (CSBG), un subsidio de bloque federal. El propósito primario de estas audiencias es solicitar el comentario público sobre el uso y la distribución propuestos de los fondos federales del año fiscal federal (FFY) 2000 para la administración del programa federal de Subsidio de Servicios Comunitarios y actividades dentro del programa de Alimento y Nutrición de la Comunidad (CFNP).

Las audiencias serán llevadas a cabo en las siguientes localizaciones:

- Martes, 27 de Julio de 1999, en la Biblioteca Pública de Houston, 500 McKinney, Houston, Texas, a la 1:30 de la tarde.

- Miércoles, 28 de Julio de 1999, en la Biblioteca Carver, 1161 Angelina, Austin, Texas, a las 6:00 de la tarde.

- Miércoles, 28 de Julio de 1999, en la Biblioteca Pública de Harlingen, 410 76 Drive, Harlingen, Texas, a las 2:00 de la tarde.

- Jueves, 29 de Julio de 1999, en la Asociación de Gobiernos de South Plains, 1323 58th Street, Lubbock, Texas, a la 1:30 de la tarde.

- Jueves, 29 de Julio de 1999, en el Centro para Cooperación Comunitaria, 2900 Live Oak, Dallas, Texas, a las 10:30 de la mañana.

Un representante de TDHCA estará presente para explicar el proceso de planificación y recibir comentarios de ciudadanos interesados y de grupos afectados con respecto a los planes propuestos. Los Informes Previstos del Uso (Intended Use Reports) se pueden obtener después del 2 de julio de 1999 comunicandose con el Departamento de Vivienda y Asuntos de la Comunidad de Tejas, la Sección de Administración y los Asuntos de la Comunidad, P.O. Box 13941, Austin, Texas 78711-3941. Este informe también se puede transferir de nuestra red de comunicaciones, *www.tdhca.state.tx.us*. Las preguntas con respecto al informe pueden ser dirigidas a Dyna C. Lang, 512-475-3905, o por via de córreo eléctronico a *dlang@tdhca.state.tx.us*.

Los comentarios sobre el uso previsto de fondos pueden presentarse en forma de testimonio oral ó escrito en las audiencias públicas. Los comentarios escritos también pueden someterse a TDHCA usando la direccion postal ó através del córreo eléctronico antes del 13 de agosto de 1999.

Individuos que requieren ayudas o servicios auxiliares para estas reuniones deben comunicarse con Gina Esteves al (512) 475-3943 o Relay Tejas al 1-800-735-2989 por lo menos 2 días antes de la reunión fijada.

TRD-9903760
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs

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Texas Department of Insurance
Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to the State of Texas by HORACE MANN LLOYDS, a domestic fire and casualty company. The home office is in Houston, Texas.

Application for admission to the State of Texas by JOHN DEERE CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Moline, Illinois.

Application to change the name of CIMARRON INSURANCE COMPANY to PROSELECT NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Phoenix, Arizona.

Application to change the name of COMMONWEALTH MORTGAGE ASSURANCE COMPANY to RADIAN GUARANTY, INC., a foreign fire and casualty company. The home office is in Philadelphia, Pennsylvania.

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-9903763
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 23, 1999

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Texas Natural Resource Conservation Commission

Notice of Application for an Amendment to a Certificate of Adjudication

MILL CREEK GOLF AND COUNTRY CLUB, P.O. Box 67, Salado, Texas, 76571, applicant, seeks an amendment pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to increase the amount of water diverted by 168 acre-feet up to a total of 336 acre-feet per year. The newly appropriated amount would be diverted from Salado Creek for irrigation of a proposed golf course with acreage irrigated also to be increased from 139.44 acres up to 280 acres. The combined maximum diversion rate from 2 diversion points will not exceed 4.09 cubic feet per second (1835 gallons per minute). The second diversion point on Salado Creek would be located at Latitude 30 degrees, 57 minutes, 28 seconds North, Longitude 97 degrees, 30 minutes, 50 seconds West, also bearing South 10 degrees West, 290 feet from a northeasterly corner of a tract recorded in Vol. 3842, page 471 in the Deed Records of Bell county, Texas, also being approximately 4065 feet downstream from the first diversion point on the authorized reservoir. Salado Creek, tributary of Lampasas River, tributary of Little River, tributary of Brazos River, Brazos River Basin, Bell County, Texas. No other changes are requested in the proposed amendment.

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 requested permit amendment 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 amendment 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, MC 105, TNRCC, P.O. Box 13087, Austin, Texas, 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-9903733
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 22, 1999

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Notice of Application for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits

Attached are Notices of Applications issued during the period of June 2, 1999 thru June 22, 1999.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 45 days (unless otherwise noted) after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin,

Texas, 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application (new permit, amendment, renewal) and permit number.

E.I DU PONT DE NEMOURS & COMPANY, INC. (Beaumont Works Facility), located at State Highway 347 on the west bank of the Neches River, six miles southeast of Beaumont on approximately 750 acres in Nederland, Jefferson County, Texas, has applied for renewal of hazardous waste permit (Permit Number HW-50166) and renewal of compliance plan (Compliance Plan Number CP-50166). The permit would authorize the continued post-closure care for five surface impoundments (Permit Unit Numbers 1-5). The compliance plan renewal will require the permittee to continue to monitor the concentrations of hazardous constituents in groundwater and remediate ground-water quality to specific standards.

COASTAL REFINING AND MARKETING, INC., located at 1300 Cantwell Lane, east of Navigation Boulevard, and approximately 0.5 miles north of IH37 on approximately 230.85 acres near Corpus Christi, Nueces County, Texas, operates a petroleum refining facility which processes crude oil into refined petroleum fractions and petrochemical products, has applied for a hazardous waste permit (Proposed Permit Number HW-50261). The permit would authorize post-closure care for a waste pile closed as a landfill. Coastal Refining and Marketing, Inc. has not submitted an application for a compliance plan. However, this compliance plan is required to authorize and require Coastal Refining and Marketing, Inc. to monitor the concentration of hazardous constituents in ground water and remediate ground-water quality to specified standards.

ASARCO Incorporated, P.O. Box 30200, Amarillo, Texas, 79120-0200 has filed an application for major amendment to an Underground Injection Control (UIC) Well Permit Number WDW-324. ASARCO requests that the permitted minimum pH of the injected wastes be lowered from 1 to 0.0. The ASARCO facility is located 8 miles northeast of Amarillo on Highway 136 in Potter County. The applicant currently operates an electrolytic refinery for the production of copper and associated by-products. The disposal well is used to dispose of treated hazardous and nonhazardous wastes generated on-site. WDW-324 was initially put in service in 1997. The permitted injection zone is at the well log depths of 2,920 to 6,700 feet. The authorized injection interval is at the well log depths of 4,050 to 5,100 feet. The operating surface injection pressure shall not exceed 350 pounds per square inch gauge (psig). The maximum injection rate shall not exceed 300 gallons per minute (gpm) for the facility. The volume of waste water injected is limited to 157,680,000 gallons per year.

DAL-TILE INTERNATIONAL (Pleasant Run Landfill), located at 2000 East Pleasant Run Road approximately 2 miles east of Interstate 45 and 270 yards west of Post Oak Road on the north side of Pleasant Run Road on approximately 10 acres in Wilmer, Dallas County, Texas, has applied for hazardous waste permit (Proposed Permit Number HW-50178). The permit would authorize post-closure care for a closed hazardous/municipal landfill. Once the final permit and compliance plan decisions of the TNRCC and U.S. Environmental Protection Agency (EPA) are effective regarding this facility, they will implement the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The final permit and compliance plan decision will also implement the federally authorized State requirements. The TNRCC and EPA have entered into a joint permitting agreement whereby permits will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Ann., Chapter 361 and RCRA, as amended. In order for the applicant to have a fully effective RCRA permit, both the TNRCC and EPA must issue the permit. All permit provisions are fully enforceable under State and Federal law.

PHILIP RECLAMATION SERVICES, HOUSTON, INC. (d/b/a Eltex Chemical Inc.), located at 4050 Homestead Road on a 5.0705-acre tract of land on the southeast corner of the intersection of Cavalcade Road and Homestead Road, approximately 1/4 mile south of Interstate 610, Houston, Harris\County, Texas, has applied PERMIT NUMBER HW-50326 (PROPOSED) for hazardous waste permit (Proposed Permit Number HW-50326). The permit would authorize a commercial hazardous waste management facility. The permit authorizes the continued operation of six existing tanks, and eight existing container storage areas, the construction of 21 proposed tanks, one container storage area, and six proposed miscellaneous units for the storage, bulking, and processing of hazardous waste, Class 1, Class 2 and Class 3 industrial solid waste, and remediation of contaminated groundwater.

TRD-9903735
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 22, 1999

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Notice Of Application For Municipal Solid Waste Management Facility Permit

For The Period of June 8, 1999 to June 21, 1999

G.O. Weiss, Inc., P.O. Box 218363, Houston, Harris County, Texas, has applied to amend existing permit Number MSW-1599 (Proposed Permit Number MSW-1599A) for a Type IV municipal solid waste landfill facility for a vertical height, vertical depth, and horizontal area increase. This amendment proposes to increase the height to a maximum elevation of 177.85 feet MSL and increase the excavation depth to 48.0 feet MSL. The proposed permit boundary will increase from 61 acres to 125.421 acres. If granted, the applicant would be authorized to dispose of brush, construction or demolition waste, and/or rubbish that are free of putrescible and free of household wastes. The facility would be authorized to operate from 7:30 am to 5:00 pm Monday through Friday, and 7:30 am to 12:00 pm on Saturday.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas, 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call

the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9903734
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 22, 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 Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 1, 1999. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO 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 C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 1, 1999. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators 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: American Hat Company, Inc.; DOCKET NUMBER: 1998-1299-AIR-E; IDENTIFIER: Account Number MQ-0283-G; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: hat manufacturing plant; RULE VIOLATED: 30 TAC §122.130(b)(2), §122.121, and the THSC, §382.085(b) and §382.054, by failing to submit the required abbreviated initial application for a Title V permit and by continuing to operate without permit authorization; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Matthew Kolodney, (713) 767-3752; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Borger Energy Associates, L.P.; DOCKET NUMBER: 1998-1488-AIR-E; IDENTIFIER: Account Number HW-0081-I; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: power generating plant; RULE VIOLATED: 30 TAC §122.121, §122.412(1)(B), and the Act, §382.054 and §382.085(b), by failing to obtain an acid rain permit before beginning operation; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Saied Ashraf, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Deering Brunson; DOCKET NUMBER: 1998-1137-SLG-E; IDENTIFIER: Enforcement Identification Number 12938; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: waste transporting business; RULE VIOLATED: 30 TAC §312.145(a), (b)(1) and (4), and Registration Number 20985, by failing to maintain a record of each individual waste collection and deposit, divide his trip tickets into five parts and maintain them, and submit an annual summary of his transport activities showing the total amounts and types of waste collected; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(4) COMPANY: Chong's Associates, Inc. dba Market Square Food Market; DOCKET NUMBER: 1999-0077-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0200544; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (e)(2), and the THSC, §341.033(d), by failing to collect and submit water samples for bacteriological analysis and by failing to provide public notice of the failure to sample; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0884; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Citgo Products Pipeline Company; DOCKET NUMBER: 1998-1357-IWD-E; IDENTIFIER: Enforcement Identification Number 12737; LOCATION: Euless, Tarrant County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §321.133(c)(2)(A) and the Code, §26.121, by failing to meet the 0.05 milligrams per liter (mgl) maximum effluent limitations for benzene and the 15.0 mgl maximum effluent limitations for total petroleum hydrocarbons; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: Deaf Smith County Fresh Water Supply District No. 1; DOCKET NUMBER: 1998-0765-MLM-E; IDENTIFIER: PWS Number 0590002; LOCATION: near Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e), (d), (f)(2)(B), and (p)(1), by failing to operate the facility under the direct supervision of a certified water works operator, compile and submit monthly reports of water works operations, test the disinfect and residual at representative locations in the distribution system, and perform annual inspections of the ground storage tank; and 30 TAC §325.3, by failing to operate the wastewater collection system under the direct supervision of a certified wastewater collection system operator; PENALTY: $600; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: General Motors Corporation; DOCKET NUMBER: 1998-1358-IWD-E; IDENTIFIER: Enforcement Identification Number 13024; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: car rental; RULE VIOLATED: 30 TAC §321.133(c)(2)(A), Texas Pollutant Discharge Elimination System General Permit Number TXG830000, the Code, §26.121, and the Clean Water Act, by failing to meet the maximum effluent limitations for benzene, total petroleum hydrocarbons, total benzene, toluene, ethyl benzene, and xylene; PENALTY: $600; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: The Town of Hackberry; DOCKET NUMBER: 1998-1445-MWD-E; IDENTIFIER: Permit Number 13434-001; LOCATION: Hackberry, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13434-001 and the Code, §26.121, by failing to comply with the permitted limits for five-day biochemical oxygen demand, total suspended solids, and flow; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(9) COMPANY: Adan and Melinda Marquez dba Kountry Grocery Store; DOCKET NUMBER: 1998-1406-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Number 39333; LOCATION: La Gloria, Starr County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline RULE VIOLATED: 30 TAC §334.51(b)(2) and the Code, §26.3475, by failing to install spill containment, overfill prevention equipment and tight-fill fittings on its underground storage tank (UST) system; and 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a method of release detection for its UST system; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY NAME: The City of Lubbock, Lubbock Power and Light; DOCKET NUMBER: 1999-1049-IWD-E; IDENTIFIER: Permit Number 03668; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: steam electric station; RULE VIOLATED: Permit Number 03668 and the Code, §26.121, by failing to comply with the daily maximum copper permit limit concentration of 0.100 mgl and its daily average copper permit limit of 0.6 mgl; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(11) COMPANY: City of Mabank; DOCKET NUMBER: 1999-0305-PWS-E; IDENTIFIER: PWS Number 1290005; LOCATION: near Gun Barrel City, Henderson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(g) and (s), by failing to disinfect when repairs were made to existing facilities in accordance with the American Water Works Association and by failing to issue a boiled water notice; PENALTY: $400; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(12) COMPANY: W. R. Meadows, Incorporated; DOCKET NUMBER: 1999-0228-AIR-E; IDENTIFIER: Account Number TA-1014-B; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: concrete curing and construction; RULE VIOLATED: 30 TAC §116.115(c) and the Act, §382.085(b), by exceeding the permitted usage limits of 130,000 gallons a year for mineral spirits and 100,000 gallons a year for number two fuel oil; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(13) COMPANY: The City of Mineola; DOCKET NUMBER: 1998-0870-MWD-E; IDENTIFIER: Permit Number 10349-001; LOCATION: Mineola, Wood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10349-001 and the Code, §26.121, by failing to comply with the ammonia-nitrogen daily average loading, concentration, and maximum concentration permit limits, carbonaceous biochemical oxygen demand daily average loading and concentration, total suspended solids daily average loading, concentration, and maximum concentration, minimum dissolved oxygen, and maximum pH limit; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Eric Reese, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Danny Schenk dba North Central Texas Dairy; DOCKET NUMBER: 1998- 1047-AGR-E; IDENTIFIER: Permit Number 03507; LOCATION: Scotland, Archer County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.42(a), by failing to submit a permit renewal application; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: The City of Pottsboro; DOCKET NUMBER: 1998-0871-MWD-E; IDENTIFIER: Permit Number 10591-001; LOCATION: Pottsboro, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.126(a), Permit Number 10591-001, and the Code, §26.121, by exceeding 75% and 90% of the permitted daily average flow of 0.21 million gallons a day (mgd), by failing to comply with the daily average flow permit limit of 0.21 mgd; 30 TAC §319.11(a), by failing to use an approved method to measure chlorine; and 30 TAC §305.125(5), by failing to ensure at all times that the facility and its systems of collection, treatment, and disposal are properly operated; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: Progressive Dairies Texas, Inc.; DOCKET NUMBER: 1999-0476-AGR-E; IDENTIFIER: Permit Number 02946; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121, by allowing an unauthorized discharge of waste from an animal feeding operation; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Eric Reese, (512) 239-2611; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) COMPANY: Reliant Energy Houston Lighting & Power - T.H. Wharton Electric Generating Station; DOCKET NUMBER: 1998-1541-AIR-E; IDENTIFIER: Account Number HG-0357-S; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: electric generating station; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 21592, and the THSC, §382.085(b), by failing to perform a required semi-annual Relative Accuracy Test Audit in the specified time frame; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3726; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Lonny Burnaman dba River Run Water System; DOCKET NUMBER: 1999- 0076-PWS-E; IDENTIFIER: PWS Number 0200575; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (e)(2), and the THSC, §341.033(d), by failing to collect and submit water samples for bacteriological analysis and by failing to provide public notice of the failure to sample; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0884; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Rural Bardwell Water Supply Corporation; DOCKET NUMBER: 1997-0996- PWS-E; IDENTIFIER: PWS Number 0700023; LOCATION: Ennis, Ellis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) and (b)(1)(B), by failing to develop a sample siting plan for bacteriological sampling and by failing to properly submit routine and repeat distribution samples each month for bacteriologi-

cal analysis; 30 TAC §290.42(e)(2), by failing to install the point of application for disinfection on the well discharge line ahead of the ground storage tank; 30 TAC §290.46(f)(1)(A) and (2)(B), (i), (j), (l), (n), (p), and (x), by failing to operate the chlorination facilities so as to maintain a minimum free chlorine residuals of 0.2 mgl, provide a chlorine test kit which employs a diethyl-p-phenylenediamine indicator to determine free chlorine residuals, perform and record the results of the chlorine residual test at least once every seven days, adopt adequate plumbing regulations, complete customer service inspection certificates, flush monthly, or more often if required, all dead end mains to maintain water quality, prepare and keep up-to-date a map of the distribution system, conduct annually and record the results of inspections of the ground storage and pressure tanks, and plug and seal or repair to a non- deteriorated condition the deteriorated wells within the system; 30 TAC §290.113, by failing to provide water which meets the minimum standards for sulfates and total dissolved solids; 30 TAC §290.45(b)(1)(C), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(1)(D) and (F), (3)(I), and (K), by failing to insure that livestock is not allowed within 50 feet of the well, secure and record at the county courthouse a sanitary easement covering all property within 150 feet of the well, fine grade the well site so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance, and seal the wellhead with gaskets or a pliable crack-resistant caulking compound; and 30 TAC §290.43(c)(4), by failing to provide a water level indicator on the ground storage tank; PENALTY: $5,303; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(20) COMPANY: Sunset Park Water Corporation dba Sunset Park Subdivision; DOCKET NUMBER: 1999-0306-PWS-E; IDENTIFIER: PWS Number 2130022; LOCATION: Glen Rose, Somervell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), (M), and (N), by failing to provide a screened well casing vent, a sample tap on the well head, and a flow meter on the well pump discharge line; 30 TAC §290.42(i), by failing to obtain a certification from an organization accredited by the American National Standards Institute; 30 TAC §290.43(c)(4), by failing to provide a water level indicator on the ground storage tank; 30 TAC §290.45(b)(1)(B)(iii), by failing to provide the minimum total capacity of two gallons per minute per connection for two or more service pumps; 30 TAC §290.46(e)(1), (f)(2), (i), (j), (n), (p)(1) and (2), and (w), by failing to provide a certified operator to supervise the operation of the public water supply system, maintain an adequate disinfectant residual throughout the distribution system and equipment, utilize a diethyl-p-phenylenediamine indicator and maintain the record of these test results, adopt an adequate plumbing ordinance, complete a customer service inspection certification prior to providing continuous water service, prepare a distribution system map, inspect the ground storage tank on an annual basis, inspect the pressure tanks on an annual basis, and post a legible sign at each production, treatment, and storage facility; 30 TAC §290.106(a)(1), by failing to develop a sample siting plan; 30 TAC §290.112(1), by failing to provide bacteriological analyses records; and 30 TAC §290.51 and the Code, §341.041, by failing to pay the required public health service annual fee; PENALTY: $3,938; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(21) COMPANY: U.S. Denro Steels, Inc.; DOCKET NUMBER: 1999-0356-AIR-E; IDENTIFIER: Account Number CI-0170-H; LOCATION: near Baytown, Chambers County, Texas; TYPE OF FACILITY: plate mill; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the THSC, §382.085(b) and §382.054, by failing to obtain a Title V operating permit or submit an initial abbreviated application; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Ruth Cleveland, (713) 767-3544; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Joel Vestal; DOCKET NUMBER: 1998-1354-OSS-E; IDENTIFIER: Enforcement Identification Number 13051; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.58(a)(3) and the THSC, §366.051(c), by failing to obtain authorization to construct from the permitting authority prior to installing the facility; and the THSC, §366.054, by failing to notify the commission or authorizing agent prior to installing the facility; PENALTY: $400; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23) COMPANY: W. Oak Phoenix Corporation; DOCKET NUMBER: 1998-0200-PWS-E; IDENTIFIER: PWS Number 1160097; LOCATION: near Dallas, Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), by failing to have a written sample siting plan; 30 TAC §290.46(e), (n), and (p)(1) and (2), by failing to operate the water system under the direct supervision of a certified water works operator holding a valid Grade D or higher certification, prepare and maintain a current map of the distribution system, maintain the interior and exterior surface of the ground storage tank, and perform annual tank inspections on the pressure and ground storage tanks; 30 TAC §290.45(b)(1)(B)(ii), by failing to meet the minimum water system capacity requirement for total storage capacity; 30 TAC §290.41(c)(1)(D) and (F), (3)(B), (K), and (M), by failing to ensure livestock are not allowed within 50 feet of the well, secure a sanitary control easement for each well location, provide well number two with a well casing that extends a minimum of 18 inches about the elevation of the finished or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block, provide a screened well casing vent, and provide a suitable sampling tap on the well number 2 discharge line; 30 TAC §290.43(c)(1) and (2), (d)(1), (2), and (3), by failing to protect the pump station number 2 ground storage tank vent opening with 16-mesh or finer corrosion resistant screens, provide the ground storage tank with a 30-inch diameter roof access opening, provide pressure tanks of 1,000 gallons or greater that are constructed in accordance with America Society of Mechanical Engineers with a permanently attached name plate, provide pressure relief devices on pressure tanks, and provide a means to determine the air-water-volume on the pressure tanks of 1,000 gallons or greater capacity; 30 TAC §290.42(i), by failing to use American National Standards Institute/National Sanitation Foundation chemicals; 30 TAC §290.51 and the Code, §341.041, by failing to pay the public health service fee; and 30 TAC §290.76 and the Code, §5.235(n)(1), by failing to pay the regulatory assessment fee; PENALTY: $2,188; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239- 4489; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(24) COMPANY: West Harris County Municipal Utility District No. 10; DOCKET NUMBER: 1999-0088-MWD-E; IDENTIFIER: Permit Number 12171-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: municipal utility district; RULE VIOLATED: 30 TAC §305.125(2)(a) and the Code, §26.121, by failing to renew permit on or before the expiration date; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9903705
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 22, 1999

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Notice of Public Hearing

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning the repeal of 30 TAC Chapter 119, concerning Control of Air Pollution from Carbon Monoxide

This action constitutes the commission's review of the rules contained in Chapter 119 in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. Chapter 119 requires the incineration of vent gas streams from blast furnaces, iron cupolas, and catalyst regeneration units for the purpose of controlling emissions of carbon monoxide (CO), and applies only in Aransas, Bexar, Brazoria, Calhoun, Dallas, El Paso, Galveston, Harris, Jefferson, Matagorda, Montgomery, Nueces, Orange, San Patricio, Travis, Victoria, Hardin, and Tarrant Counties.

Through a search of the emission inventory database, the commission has determined that, with two exceptions, sources that are the subject of this chapter are either under permit or, in the case of blast furnaces, no longer in existence. The first of these exceptions is a single iron cupola in Harris County that emits approximately 15 tons of CO per year, an amount too insignificant to require incineration to protect public health from air pollution. The other unpermitted source is a petrochemical plant in Brazoria County whose maximum CO concentrations are according to agency modeling data below any significant monitoring or health effects threshold. The commission therefore proposes the repeal of Chapter 119.

A public hearing on the proposal will be held July 26, 1999, at 2:00 p.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 2, 1999, and should reference Rule Log Number 98035-119-AI. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9903628
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 17, 1999

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Notice of Water Quality Applications During the Period of May 21, 1999 Through June 21, 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 AFTER NEWSPAPER PUBLICATION OF THE NOTICE.

ALEDO INDEPENDENT SCHOOL DISTRICT has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13438-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located 4,500 feet west - northwest of the intersection of Farm-to-Market Road 1187 and County Road 4001 (Old Bankhead Highway), and approximately one mile southwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 1187 in Parker County, Texas.

ROBERT EUGENE ALLIN AND ELIZABETH SUE ALLIN has applied for a renewal of TNRCC Permit Number 13601-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,500 gallons per day. The plant site is located on Highway 75, approximately 0.7 miles north of the intersection of Highway 75 and Shepard Hill Road in Montgomery County, Texas.

CITY OF ANDERSON, P. O. Box 592, Anderson, Texas 77830-0592, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13931-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The plant site is located 0.5 mile south of the intersection of Farm-to-Market Road 1774 and State Highway 90 in Grimes County, Texas.

ANDERSON-SHIRO CSI, P.O. Box 289, Anderson, Texas 77830, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13408-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located approximately 2500 feet west of the intersection of Farm-to-Market Road 149 and State Highway 90, north of the intersection of an unnamed tributary of Holland Creek and Farm-to-Market Road 149 in Grimes County, Texas.

CITY OF ANNA has applied for a renewal of TNRCC Permit Number 11283-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1 mile south and 0.9 mile west of the intersection of Farm-to-Market Road 455 and State Highway 5 in Collin County, Texas.

AQUILA REALTY FUND I, INC., has applied for a renewal of TNRCC Permit Number 13617-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,100 gallons per day. The plant site is located at 1300 Hugh Road,

approximately 1,300 feet west of the intersection of Spears Road and Hugh Road and approximately one mile north of the intersection of Greens Road and Spears Road in Harris County, Texas.

ARANSAS COUNTY AIRPORT has applied for a renewal of Permit Number 11280-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via evaporation. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,600 gallons per day via evaporation. The decrease in flow in based on the information submitted by the permittee. The wastewater treatment facility and disposal site are located on the east side of Farm-to-Market Road 1781 at a point approximately 3,000 feet north of the intersection of Farm-to-Market Road 1781 and Copano Village Road in Aransas County, Texas.

BAYER CORPORATION has applied for a major amendment to TNRCC Permit Number 01167 to authorize an increase in the discharge of process wastewater, and storm water runoff from a daily average flow not to exceed 3,500,000 gallons per day to a daily average flow not to exceed 5,200,000 gallons per day and an increase in the daily maximum flow from 12,400,000 gallons per day to 18,400,000 gallons per day via Outfall 001. The current permit authorizes the discharge of process wastewater and storm water runoff at a daily average flow not to exceed 3,500,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (PDES) permit will replace the existing NPDES Permit Number TX0003654 issued on June 27, 1994 and TNRCC Permit Number 01167 issued on May 21, 1993. The applicant operates a synthetic rubber manufacturing plant. The plant site is located 2800 feet southeast of the intersection of Farm-to-Market Road 1006 and Foreman Road in the City of West Orange, Orange County, Texas

ARTHUR E. BAYER has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13819-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located adjacent to the east right-of-way of Lemm Gully, approximately 1,400 feet south of Spring- Cypress Road in Harris County, Texas.

BAYOU FOREST VILLAGE, INC., has applied for a renewal of TNRCC Permit Number 12259-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 2,500 feet southeast of the intersection of Aldine Mail Road and Aldine-Westfield Road at 12500 AldineWestfield Road in Harris County, Texas.

BEAUMONT FARMS, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13017-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 2,200 feet southwest of the intersection of Smith Road and Kidd Road in Jefferson County, Texas.

CITY OF BELLS, P.O. Box 95, Bells, Texas 75414-0095, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10126-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 170,000 gallons per. The plant site is located approximately 480 feet northwest of the intersection of U.S. Highway 69 and Farm-to- Market Road 1897, north of Bells in Grayson County, Texas.

SIDNEY L. BISHOP, JR. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11099-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located approximately 500 feet north of State Highway 21 on the west shore of Toledo Bend Reservoir at Pendleton Bridge in Sabine County, Texas.

BOLING MUNICIPAL WATER DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0033910 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10843- 001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day. The plant site is located adjacent to Caney Creek, west of and adjacent to Rycade Avenue in the City of Boling in Wharton County, Texas.

CITY OF BYERS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0075442 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10890-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 43,000 gallons per day. The plant site is located approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79, and approximately 400 feet east of Byers City Lake in the City of Byers in Clay County, Texas.

CITY OF CALDWELL has applied for a renewal of TNRCC Permit Number 10813-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 711,000 gallons per day. The plant site is located on the west bank of Davidson Creek, 1 mile southeast of the intersection of State Highway 21 and State Highway 36 in Burleson County, Texas.

CENTER FOR THE RETARDED, INC., has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0104299 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13466- 001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow of 20,000 gallons per day. The plant site is located four miles north of the intersection of Interstate Highway 10 and Farm-to-Market Road 1458, on Farm-to-Market Road 3318 in Waller County, Texas.

CITY OF CENTERVILLE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0077810 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10147-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 124,000 gallons per day. The plant site is located immediately south of State Highway 7 and approximately 1700 feet east of .S. Highway 75 in the City of Centerville in Leon County, Texas.

CHAMP'S WATER COMPANY has applied for renewal of the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0032085 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11158-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,000 gallons per day. The plant site is located located at 6102 Laramie street, east of the inter-

section of Old Humble Road and Laramie Street and approximately 3,500 feet northeast of the intersection of U.S. Highway 59 and Old Humble Road in Harris County, Texas.

CHAMP'S WATER COMPANY, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0069582 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11739-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 100 feet north and 600 feet east of the intersection of Verhalen Avenue and Reeveston Road, north of the City of Houston in Harris County, Texas.

CHAO KUAN LEE has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13560-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The plant site is located 600 feet north of Northville Road and 300 feet west of Interstate Highway I-45 in Harris County, Texas.

CITGO REFINING AND CHEMICALS COMPANY L.P. has applied for a renewal of TNRCC Permit Number 00467, which authorizes the discharge of process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 3,500,000 gallons per day via Outfall 001, and process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 1,600,000 gallons per day via Outfall 002, and storm water runoff on an intermittent and flow variable basis via Outfalls 003, 004, 005, 006, and 007. Issuance of this Texas Pollutant Discharge Elimination System (TPDES permit will replace the existing NPDES Permit Number TX0006211 issued on July 24, 1998 and TNRCC Permit Number 00467. The applicant operates petroleum refinery. The plant site is located at 1801 Nueces Bay Boulevard in the City of Corpus Christi, Nueces County, Texas

CLINT INDEPENDENT SCHOOL DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13667-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons. The plant site is located on the west side of the Clint Spur Drain in the vicinity of Williams Street, approximately 2,000 feet north of Farm-to-Market Road 1110 and approximately 800 feet east of U.S. Highway 80 in El Paso County, Texas.

CMH PARKS, INC., has applied for renewal of existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0094463 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12849-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located approximately 1.0 mile north of the intersection of Farm-to-Market Road 518 and Suburban Gardens Road and approximately 2.3 miles west-northwest of the City of Pearland in Brazoria County, Texas.

CITY OF COLDSPRING has applied for renewal of Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13291-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 1500 feet south of the intersection of State Highway 150 and Farm-to-Market Road 2973 and approximately 2600 feet west of the intersection of State Highway 150 and Farm-to-Market Road 222 in San Jacinto County, Texas.

COMPAQ COMPUTER CORPORATION has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13508-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 7300 feet east of the intersection of Louetta Road and State Highway 249 in Harris County, Texas.

CITY OF CORPUS CHRISTI, P.O. Box 9277, Corpus Christi, Texas 78469, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10401-009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located at the west end of Whitecap Boulevard on Padre Island in the City of Corpus Christi in Nueces County, Texas.

CITY OF CROWELL has applied for a renewal of TNRCC Permit Number 10638-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 1/2 mile east of AT&SF Railroad crossing over State Highway 283, in the southeast corner of the City of Crowell in Foard County, Texas.

CITY OF DAYTON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10564-004, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 0.50 mile southwest of the intersection of State Highway 146 and U.S. Highway 90 in Liberty County, Texas.

DIAMOND HEAD WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit Number 11478-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11478-001 will replace the existing TNRCC Permit Number 11478-001. The plant site is located approximately 1.0 mile north of the intersection of State Highway 105 and McCaleb Road and approximately 1.25 miles northwest of the Lake Conroe Dam in Montgomery County, Texas.

CITY OF DIBOLL has applied for a renewal of TNRCC Permit Number 10288-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,098,000 gallons per day. The plant site is located adjacent to White Oak Creek, approximately 1,500 feet west of the crossing of White Oak Creek by U.S. Highway 59 on the south side of Diboll in Angelina County, Texas.

DOUGLAS UTILITY COMPANY has applied for a renewal of TNRCC Permit Number 11200-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 380,000 gallons per day. The plant site is located south of North Belt, approximately one mile west of Interstate Highway 45, approximately 0.45 mile west of Lee Road in Harris County, Texas.

E.I. DUPONT DE NEMOURS AND COMPANY has applied for a major amendment to TNRCC Permit Number 00473 to authorize an increase in the discharge of treated wastewater, utility wastewater and stormwater from a daily average flow not to exceed 10,200,000 gallons per day to a daily average flow not to exceed 13,700,000 gallons per day via Outfall 001; a revision of effluent limitations

for chloroform, oil and grease, and total suspended solids at Outfall 001; the removal of monitoring requirements for total silver at Outfall 001; a reduction of monitoring frequencies for certain parameters at Outfall 001; revised monitoring requirements for stormwater outfalls 002, 004, 005, and 006; and the addition of stormwater outfalls 008, 010, 011, 015, 018 and 020. The current permit authorizes the discharge of treated wastewater, utility wastewater and stormwater at a daily average flow not to exceed 10,200,000 gallons per day via Outfall 001, stormwater from parking lots, office buildings, shops and service area on an intermittent and flow variable basis via Outfall 002, which will remain the same, stormwater from the methanol intermediates tank farm on an intermittent and flow variable basis via Outfall 003, stormwater from the railroad marshalling yard on an intermittent and flow variable basis via Outfall 004, which will remain the same, and stormwater from the methanol product tank farm via Outfall 005, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0004669 issued on May 1, 1998 and TNRCC Permit Number 00473, issued on May 31, 1996. The applicant operates a petrochemical plant complex producing organic and inorganic chemicals in separate units. The plant site is located on State Highway 347, on the west bank of the Neches River at the McFaddin Bend Cutoff, six miles south of the City of Beaumont, and eight miles north of Sabine Lake, Jefferson County, Texas.

EL PASO ELECTRIC COMPANY has applied for a renewal of Permit Number 00836, which authorizes the disposal by evaporation and irrigation of industrial wastewater resulting from cooling tower blowdown, low volume wastes, and metal cleaning wastes. The applicant operates a steam electric power plant. This permit will not authorize a discharge of pollutants into waters in the State. The plant site is located at 4900 Stan Roberts Sr. Avenue, 0.2 miles east of the intersection of Farm-to-Market Road 3255 and Farm-to- Market Road 2529, four miles north of the City of El Paso, El Paso County, Texas.

EUBANK MANUFACTURING ENTERPRISES, INC. has applied for a renewal of TNRCC Permit Number 13830-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The plant site is located on Farm to Market Road 2011, approximately 2 miles south of Interstate Highway 20 in Gregg County, Texas.

CITY OF EUSTACE has applied for a renewal of TNRCC Permit Number 11132-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately 800 feet east of the intersection of Cornelius Lane and Smith Street, southeast of midtown Eustace in Henderson County, Texas.

FALLBROOK UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10919-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,300,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The plant site is located north of Halls Bayou, 1,300 feet south of West Road and 2,500 feet east of Stuebner-Airline Road (Veteran's Memorial Drive) and approximately 1.0 mile west of Interstate Highway 45 in Harris County, Texas.

FATIMA FAMILY VILLAGE, INC., has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13767-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13767-001 will replace the existing TNRCC Permit Number 13767-001.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 30 has applied for a renewal of TNRCC Permit Number 12068-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 730,000 gallons per day. The plant site is located at 7530 Tetela Drive, approximately 2.5 miles west of the intersection of State Highway 6 and Beechnut in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 46, Colony Bay Limited, A Texas Limited Partnership, and Marilyn Investments, Inc., Managing Partner has applied for a renewal of TNRCC Permit Number 12782-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 520,000 gallons per day. The plant site is located approximately five miles southeast of the intersection of U.S. Highway 59 and State Highway 6, on the east side of Thompson Ferry Road, 0.6 mile west of the intersection of State Highway 6 and Senior Road in Fort Bend County, Texas.

CITY OF FREEPORT has applied for a renewal of TNRCC Permit Number 10882-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The existing permit also authorizes the irrigation of treated effluent on 167 acres of golf course located adjacent to the treatment facility. The plant site is located at 123 Slaughter Road, North of State Highway 36, approximately 1 mile south of the Brazos River in Brazoria County, Texas.

FRITO-LAY, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0085782 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02443. The draft permit authorizes the discharge of process wastewater, truck wash water, air scrubber wastewater, and storm water runoff at a daily average flow not to exceed 1,100,000 gallons per day dry weather flow via Outfall 001, and domestic wastewater at a daily average not to exceed 14,000 gallons per day via Outfall 002. The plant site is located on the north side of State Highway 36 and approximately three miles west of the intersection of State Highway 36 and U.S. Alternate Highway 90 near the City of Rosenberg in Fort Bend County, Texas.

FRUITVALE HOUSING AUTHORITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13961-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 4,300 gallons per day. The wastewater treatment facility serves the Fruitvale Housing Authority and was previously permitted under TNRCC Permit Number 12198-001 and NPDES Permit Number TX0083011 which were both allowed to expire. The plant site is located approximately 2,500 feet south-southeast of the intersection of State Highway 80 and Farm-to-Market Road 1910 and approximately 4,000 feet southwest of the intersection of State Highway 80 and Farm-to-Market Road 1110 in Van Zandt County, Texas.

THE CITY OF GIDDINGS has applied for a renewal of TNRCC Permit Number 10456-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located approximately 1.5 miles west of the intersection of U.S. Highway 77 and Farm-to-Market Road 2440, on the south side of Farm-to-Market Road 2440 in Lee County, Texas.

THE GOODYEAR TIRE & RUBBER COMPANY has applied for a major amendment to TNRCC Permit Number 00519 to authorize an increase in the daily average flow from 3,000,000 gallons per day to 3,600,000 gallons per day via Outfall 001, to increase the daily maximum flow from 3,800,000 gallons per day to 4,200,000 gallons per day via Outfall 001, and to increase mass limitations for conventional pollutants in the existing permit at Outfall 001. The current permit authorizes the discharge of treated process wastewater and storm water at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001; storm water runoff from non-process areas on an intermittent and flow variable basis via Outfall 002; and storm water runoff on an intermittent and flow variable basis via Outfalls 003 and 004, 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 TX0005061 issued on January 26, 1996 and TNRCC Permit Number 00519. The applicant operates the Beaumont Chemical Plant which manufactures synthetic rubber, adhesive resins, antioxidants, and isoprene. The plant site is located south of Interstate 10 (between Interstate 10 and State Highway 124), approximately nine miles southwest of the City of Beaumont, Jefferson County, Texas.

GRAND RANCH TREATMENT COMPANY has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13846-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 61,000 gallons per day. The plant site is located 1000 feet south of County Road 915 and approximately 1.3 miles west of Farm-to-Market Road 1902 in Johnson County, Texas.

GULF COAST MACHINE & SUPPLY COMPANY, has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0008290 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01203. The draft permit authorizes the discharge of the discharge of process wastewater, domestic wastewater and stormwater at a daily maximum flow not to exceed 300,000 gallons per day via Outfall 001. The applicant operates a forging and industrial machine shop. The plant site is located approximately 800 feet east of the intersection of Interstate Highway 10 and Smith Road, and seven (7) miles southwest of the City of Beaumont, in Jefferson County, Texas.

GULF COAST PORTLAND CEMENT COMPANY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0004022 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01021. The draft permit authorizes the discharge of cooling tower blowdown and process-area stormwater runoff on an intermittent and flow variable basis via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfall 002 and Outfall 003. The applicant operates a facility to receive, store, grind, and ship petroleum coke. The plant site is located at 6203 Industrial Way in the City of Houston, Harris County, Texas.

GULF COAST TRADES CENTER has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0035157 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12159-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The plant site is located within the Gulf Coast Trades Center Complex approximately 3.8 miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 1375 and northeast of Lake Conroe in Walker County, Texas.

CITY OF GUSTINE has applied for a renewal of TNRCC Permit Number 10841-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 82,000 gallons per day. The plant site is located approximately 2 miles east of the intersection of State Highway 36 and Farm-to- Market Road 1476 in Comanche County, Texas.

HANOVER LAND COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11797-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located near the intersection of Chippewa Boulevard and North Houston-Rosslyn Road and one mile south of State Highway 149 in Harris County, Texas.

HANSON AGGREGATES WEST, INC., has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0103551 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02893. The draft permit authorizes the discharge of stormwater and mine-pit groundwater at a daily average flow not to exceed 360,000 gallons per day via Outfall 001. The applicant operates a sand and gravel mining operation. The plant site is located approximately 1.5 miles south of the intersection of State Highway 6 and Loop 340, southeast of the City of Waco in McLennan County, Texas

HARRIS COUNTY has applied for a renewal of TNRCC Permit Number 13561-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located within the grounds of the Harris County Detention Center, 500 feet south of Atascocita Road, approximately one mile southeast of the intersection of Atascocita Road and Wilson Road in Harris County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NUMBER 58 has applied for a renewal of TNRCC Permit Number 10668-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The plant site is located at 20410 Buffalo Trail in the Indian Shores Subdivision, approximately 4 miles south-southwest of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 2100 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 49, c/o Smith, Murdaugh, Little, and Bonham, 1100 Louisiana, Suite 400, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11919-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 700 feet north of the North Belt (Beltway 8) adjacent to and East of Garners Bayou in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 119 has applied for a renewal of TNRCC Permit Number 12714-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 800 feet southeast of the intersection of Breen Road and North Houston Rosslyn Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 122 has applied to the Texas Natural Resource Conservation Commis-

sion (TNRCC) for a renewal of TNRCC Permit Number 12250-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 2,000 feet north and 4,000 feet west of the intersection of Haralson Road and U.S. Highway 90A in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 249 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13765-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 1,500 feet south-southwest of the confluence of Wunsche Gully and Lemm Gully, approximately 3,000 feet east of Interstate Highway 45 and approximately 3,800 feet west of the Hardy Toll Road in the northern portion in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 304 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13564-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The plant site is located 2.0 miles southeast of the intersection of Stuebner-Airline Road and Farm-to-Market Highway 1960 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 321 has applied for a renewal of TNRCC Permit Number 13211-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,600,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located approximately 1,200 feet south of West Road and 6,000 feet west of Interstate Highway 45 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 360 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13753-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located approximately 3,500 feet north of the intersection of Kluge Road and Huffmeister Road, 1,100 feet northwest of Kluge Road and approximately 4.0 miles north of the intersection of U. S. Highway 290 and Huffmeister Road in Harris County, Texas.

HARRIS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 109 has applied for a renewal of TNRCC Permit Number 11026-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located at 13415 Bammel-North Houston Road in the City of Houston, 0.57 mile southwest of the intersection of Veterans Boulevard (Stuebner-Airline Road) and Bammel-North Houston Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 150, c/o Schwartz, Page & Harding, L.L. P., 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11863-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located at 11621 C Walters Road, approximately 3 miles west of the intersection of Interstate Highway 45 and Greens Bayou Crossing in Harris County, Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 216 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12682-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located adjacent to and south of the feeder road for Interstate Highway 10, approximately 0.6 mile east of Barker Cypress Road and approximately 2.0 miles west of State Highway 6 in Harris County, Texas.

KAUFMAN COUNTY DEVELOPMENT DISTRICT NUMBER 1 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13910-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located 1,500 feet southeast of an unimproved road (Helms Road); 3,400 feet west of Big Brushy Creek and 3,800 feet south of the east bound lanes of U.S. Highway 80 in Kaufman County, Texas.

LAKE CONROE WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit Number 12439-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located approximately 700 feet north of State Highway 105 and 1600 feet east of McCaleb Road in Montgomery County, Texas.

LAKEVIEW METHODIST ASSEMBLY has applied for a renewal of TNRCC Permit Number 10578- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately one mile north of State Highway 294 and approximately three miles east of the intersection of State Highway 294 and U. S. Highway 79 in Anderson County, Texas.

LANGHAM CREEK UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11682- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located at 17255 Glenmorris Drive along the south bank of Langham Creek, approximately 1 mile south of Farm-to-Market Road 529 and 1.25 miles west of Highway 6 in Harris County, Texas.

LA POYNOR INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13538-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located on the La Poynor I.S.D. campus, approximately 2 miles southeast of the intersection of U.S. Highway 175 and Farm-to-Market Road 2588 in Henderson County, Texas.

LATEXO INDEPENDENT SCHOOL DISTRICT has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13780-001. The

draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located approximately 1000 feet east of the intersection of U.S. Highway 287 and Farm-to-Market Road 2663 on the south side of Farm-to-Market Road 2663 at Latexo I.S.D., south of the baseball field in Houston County, Texas.

CITY OF LIPAN has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13590-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located north of City of Lipan, approximately 1.5 miles northeast of the intersection of Farm-to-Market Road 4 and Farm-to-Market Road 1189 in Hood County, Texas.

CITY OF LORENA has applied for a major amendment to TNRCC Permit Number 12195-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The plant site is located adjacent to the northern boundary of Lorena Cemetery and immediately west of the Missouri-Kansas- Texas Railroad right-of-way, approximately 3500 feet south of the intersection of Center Street and Front Street in McLennan County, Texas.

MCDONALD'S CORPORATION has applied for a renewal of TNRCC Permit Number 13807-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The plant site is located at 16002 Hempstead Highway and U.S. Highway 290 near the City of Jersey Village in Harris County, Texas.

PEYTON MARTIN has applied for a renewal of TNRCC Permit Number 13307-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 3,500 feet northwest of the intersection of Farm-to-Market Roads 518 and 1128 and 2,500 feet north of Farm-to-Market Road 518, approximately 3.4 miles due west of the City of Pearland central business district in Brazoria County, Texas.

MARTINSVILLE INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Texas Pollution Discharge Elimination System (TPDES) Permit Number 14027-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located at the southwest corner of the intersection of State Highway 7 and Farm-to-Market Road 95, 12.7 miles west of the City of Nacogdoches in Nacogdoches County, Texas.

MATAGORDA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 6 has applied for a renewal of TNRCC Permit Number 10663-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 193,000 gallons per day. The plant site is located approximately 3000 feet east of the intersection of State Highway 35 and Farm-to-Market Road 2540 in Matagorda County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 56, c/o Young and Brooks, 1415 Louisiana, 5th floor, Houston, Texas 77002-7349, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13760-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located located approximately 4 1/2 miles along Farm-to-Market Road 1314, northwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 1314 in Montgomery County, Texas.

TOWN OF MUSTANG has applied for a renewal of Permit Number 11516-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via irrigation/evaporation of 25 acres of land. The effluent irrigation acreage has been reduced from 25 acres to 10 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located 800 feet east of Interstate Highway 45 on Farm-to-Market Road 739 in Navarro County, Texas.

NEW BRAUNFELS UTILITIES has applied for a renewal of TNRCC Permit Number 10232-002, which authorizes the discharge of treated domestic wastewater at a daily average/an annual average flow not to exceed 1,100,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,100,000 gallons per day. The plant site is located approximately 700 feet southwest of the crossing of Gruene Loop Road over the Guadalupe River in Comal County, Texas.

ESTATE OF O. F. NEWTON, has applied for a renewal of TNRCC Permit Number 11249-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located about 1,000 feet northeast of West Port Arthur Road and immediately west of Viterbo Road in Jefferson County, Texas.

NORTHWEST INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 11760-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located south of State Highway 114, approximately one mile west of the intersection of State Highway 114 and Farm-to-Market Road 156 in Denton County, Texas.

CITY OF O'BRIEN has applied for a renewal of TNRCC Permit Number 13616-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 7.1 acres of pastureland adjacent to the treatment facility. The plant site is located approximately 0.8 miles north of the intersection of State Highway 6 and Farm-to-Market Road 2229, north of the City of O'Brien on the west side of State Highway 6 in Haskell County, Texas.

ORANGE COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10875-008, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 630,000 gallons per day. The plant site is located approximately 1320 feet east of the intersection of Willow Drive and Dogwood Drive in Vidor and approximately 3960 feet southwest of the intersection of State Highway 105 and the Southern Pacific Railroad in Orange County, Texas.

CITY OF ORE CITY has applied for a renewal of TNRCC Permit Number 10241-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 218,000 gallons per day. The plant site is located approximately 0.6 mile east of U.S. Highway 259 and approximately 0.85 mile northeast of the intersection of U.S. Highway 259 and Farm-to-Market Road 450 in the City of Ore City, Upshur County, Texas.

JAMES E. PETERSEN has applied for a renewal of TNRCC Permit Number 12398-001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located approximately 7500 feet west of the intersection of U.S. Highway 290 and Farm-to- Market Road 529 and south of the intersection of Fairview Road and Farm-to-Market Road 529 in Harris County, Texas.

CITY OF PFLUGERVILLE has applied for a renewal of TNRCC Permit Number 11845-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The plant site is located approximately 3,200 feet southeast of the intersection of Farm-to-Market Roads 685 and 1825 and approximately 6,000 feet northeast of the intersection of Dessau Road and Killingsworth Road in Travis County, Texas.

PILCHERS PROPERTY LIMITED PARTNERSHIP has applied for a renewal of TNRCC Permit Number 11572-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately 700 feet east of Interstate Highway 45, adjacent to Northland Shopping Center and approximately 1000 feet south-southeast of the intersection of Interstate Highway 45 and Spring Cypress Road (Farm-to-Market Road 2920) in Harris County, Texas.

CITY OF PITTSBURG has applied for a renewal of TNRCC Permit Number 10250-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 970,000 gallons per day. The plant site is located on Sparks Branch between Farm-to-Market Road 557 and State Highway 11, approximately one mile east of the intersection of State Highway Loop 271 and Farm-to-Market Road 557 and 1500 feet north of Farm-to-Market Road 557 in Camp County, Texas.

CITY OF POINT COMFORT has applied for a renewal of TNRCC Permit Number 10599-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located at the intersection of Murrah and Pease Streets, approximately 2900 feet northwest of the intersection of Farm-to-Market Road 1593 and State Highway 35 in Calhoun County, Texas.

POLK COUNTY FRESH WATER SUPPLY DISTRICT NUMBER 2 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11298-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 560,000 gallons per day. The plant site is located north of Big Fossil Creek, approximately 2.4 miles west of the intersection of U.S. Highway 81-287 and Farm-to-Market Road 156 in Polk County, Texas.

CITY OF PORT ARTHUR has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0047546 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10364-009. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located on Pleasure Island adjacent to the Sabine-Neches Waterway, approximately 1.6 miles northeast of the Gulfgate Bridge in Jefferson County, Texas.

PRAXAIR, INCORPORATED has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0003239 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01173. The draft permit authorizes the discharge of cooling tower blowdown, boiler blowdown, treated domestic wastewater, process wastewater, and process area washwater at a daily average flow not to exceed 0.43 million gallons per day via Outfall 001. The applicant operates an air separation plant. The plant site is located at the southwest corner of the intersection of Old Tidal Road and Port Terminal Railroad about 0.5 miles north of State Highway 225, north of the City of Deer Park in Harris County, Texas.

TOWN OF RANSOM CANYON has applied for a renewal of TNRCC Permit Number 10778-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 410,000 gallons per day. The plant site is located approximately 1.2 miles west of Farm-to-Market Road 400 and approximately 4.8 miles south of Farm-to-Market Road 40, east of the City of Lubbock in Lubbock County, Texas.

REGENCY CONVERSIONS, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12982-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located west of Interstate Highway 35W, at the intersection of Golden Triangle Boulevard and the west service road for Highway 35W in Tarrant County, Texas.

RENN ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 12078-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located at 9535 Sugarland-Howell Road, immediately northeast of the crossing of Sugarland-Howell Road over Keegans Bayou in Fort Bend County, Texas.

RICHARDS INDEPENDENT SCHOOL DISTRICT has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13527-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located approximately 550 feet north of Farm-to-Market Road 149 and 1,800 feet west of the Chicago, Rock Island, and Pacific Railroad in Grimes County, Texas.

CITY OF RISING STAR has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13965-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The plant site is located approximately 500 feet north of State Highway 36, one mile east of the intersection of State Highway 36 and .S. Highway 183; East Pioneer Street in Eastland County, Texas.

ROLLING FORK PUBLIC UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11188-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. The plant site is located at 8202 Latica Street on the west bank of the Rolling Fork Creek, approximately 2 miles north of U.S. Highway 90 in Harris County, Texas in Harris County, Texas.

ROYALWOOD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10608-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The plant site is located immediately west of Uvalde Road approximately 6,500 feet south of the intersection of Uvalde Road and U.S. Highway 90 in Harris County, Texas.

SAN ELIZARIO INDEPENDENT SCHOOL DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13380-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located at 12280 Socorro Road, on the San Elizario High School campus, between Socorro Road (Farm-to-Market Road 258) and the San Elizario Lateral irrigation canal in El Paso County, Texas.

SCHENECTADY INTERNATIONAL, INC., FM 523, Freeport, Texas 77541, has applied for a major amendment to TNRCC Permit Number 01961 to authorize increased mass-based effluent limitations for oil and grease, phenols, and biochemical oxygen demand applicable to discharges via internal Outfall 101 and to remove the single grab value for phenols applicable to discharges via internal Outfall 101. The current permit authorizes the discharge of treated process wastewater at a daily average flow not to exceed 1,400,00 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0067946 issued on July 31, 1987 and TNRCC Permit Number 01961 issued on December 8, 1995. The applicant operates an alkyl phenol/petrochemical plant.

SEQUOIA IMPROVEMENT DISTRICT has applied for a renewal of TNRCC Permit Number 10785- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located in the Sequoia Estates Subdivision on the north bank of Greens Bayou approximately 2000 feet west of U.S. Highway 59 and 0.7 mile south of Farm to Market Road 525 in Harris County, Texas.

DAVID LEE SHEFFIELD has applied for a renewal of TNRCC Permit Number 13147-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 1.2 miles north of the intersection of Farm-to-Road 350 and Farm-to-Market Road 3126, approximately 5 miles west of the City of Livingston and on the east shoreline of Lake Livingston in Polk County, Texas.

SHELBYVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The plant site is located approximately 300 feet east of the football field at the Shelbyville School in the southern portion of Shelbyville in Shelby County, Texas.

SHIRLEY CREEK CORPORATION has applied for a renewal of TNRCC Permit Number 10947-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 57,000 gallons per day. The plant site is located in Shirley Creek Park on the north shore of Sam Rayburn Reservoir and approximately 26 miles southeast of Nacogdoches in Nacogdoches County, Texas.

THE CITY OF SMITHVILLE has applied for a renewal of TNRCC Permit Number 10286-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located southwest of the intersection of North Second Street and Royston Street (on the east side of Gazley Creek) in the City of Smithville in Bastrop County, Texas.

SOUTHWEST UTILITIES, INC., has applied for a renewal of TNRCC Permit Number 11255-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 158,000 gallons per day. The plant site is located 3010 Kowis Street, approximately 3500 feet west-northwest of the intersection of State Highway 59 and Little York Road, 1600 feet north-northwest of the intersection of Little York Road and Foy Street in Harris County, Texas.

SPECIAL CAMPS FOR SPECIAL KIDS, has applied for a renewal of TNRCC Permit Number 13536- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 27, 500 gallons per day. The plant site is located approximately six miles east of Meridian and approximately thirteen miles north of Clinton in Brosque County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TNRCC Permit Number 10812-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located approximately 200 feet south of Aldine Mail Road between John F. Kennedy Boulevard and Gloger Road in Harris County, Texas.

TARKINGTION INDEPENDENT SCHOOL DISTRICT has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11377-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 1.5 miles east of the intersection of Farm-to-Market Road 163 and State Highway 321 and 8.0 miles southeast of the City of Cleveland in Liberty County, Texas.

TEEN MANIA INDUSTRIES, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13790-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 1,150 feet west and 1,300 feet north of the intersection of Farm-to-Market Road 1253 and State Highway 16 in Smith County, Texas.

TEJAS FINANCIAL CORPORATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13209-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately 4000 feet southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 3126 in Polk County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TNRCC Permit Number 11987-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located on the right-of-way of Interstate Highway 30 at a point one mile west of Farm-to-Market Road 990 in Bowie County, Texas.

TEX-SUN PARKS has applied for a renewal of TNRCC Permit Number 12189-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately 2000 feet west of Fry Road and 1000 feet north of Morton Road in Harris County, Texas.

THERON L. MOORE has applied for a renewal of TNRCC Permit Number 11621-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located approximately 3000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas.

THOMAS NELSON THURBER has applied for a renewal of TNRCC Permit Number 12626-001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 19,000 gallons per day. The plant site is located at 6421 Herman Road, approximately 1.5 miles south of Greens Bayou and 1.0 mile east of Highway 59 in Harris County, Texas.

CITY OF TIMPSON, has applied for a renewal of TNRCC Permit Number 10614-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 0.5 of a mile northeast from State Highway 87 and U.S. Highway 59 in Shelby County, Texas.

TRAIL OF THE LAKES MUNICIPAL UTILITY DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0074021 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11901-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day.The plant site is located approximately 6500 feet south and 150 feet east of the intersection of Woodland Hills Drive and Atascocita Road in Harris County, Texas.

TUBOSCOPE VETCO INTERNATIONAL, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12386-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The plant site is located approximately 1/4 mile south of the intersection of Old Beaumont Highway and Sheldon Road, on the east side of Sheldon Road in Harris County, Texas.

290 RESIDENTIAL, LTD., has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14028-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located on House Hahl Road, approximately 5000 feet south-southwest of the intersection of House Hahl Road and U.S. Highway 290 in Harris County, Texas.

TEXAS UTILITIES MINING COMPANY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0000752 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02700. The draft permit authorizes the discharge of wastewater from active mining areas, Outfall 001, is treated using sedimentation ponds and clarification pumps. Discharges from post mining areas, Outfall 101, are treated with sedimentation ponds. The applicant operates the Big Brown Lignite Mine. The plant site is located within a 20 mile radius of Fairfield Lake which is approximately one mile east of Farm-to-Market Road 2570 and eight miles north of the City of Fairfield in Freestone County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0057932 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12055- 001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day. The plant site is located in Avalon Park, on the south side of Lavon Lake, immediately northwest of Lavon Dam, and approximately 2.5 miles northwest of the intersection of State Highway 78 and State Highway 205 in Collin County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0057886 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12059-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located in Mallard Park on the east side of Lavon Lake northwest of the intersection of State Highway 78 and Farm-to-Market Road 6 in Collin County, Texas.

UNITED STATES DEPARTMENT OF AGRICULTURE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0020699 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12263-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located near the shore of Sam Rayburn Reservoir, approximately 0.5 mile northeast of the dead end of Farm-to-Market Road 2743 and approximately 5.5 miles east of the intersection of Farm-to-Market Road 2743 and State Highway 63 in Angelina County, Texas.

U.S. DEPARTMENT OF THE ARMY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0063886 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02230. The draft permit authorizes the discharge of vehicle and aircraft washwater and storm water runoff at a daily average flow not to exceed 0.06 gallons per day (dry weather flow) via Outfall 001. The plant site is located within the boundaries of Fort Hood in Bell County, Texas.

UNITED STRUCTURES OF AMERICA, INC. has applied for a renewal of TNRCC Permit Number 12765-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located 1912 Buschong in Houston in Harris County, Texas.

UNIVERSITY OF TEXAS, has applied for a renewal of TNRCC Permit Number 11370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located at McDonald Observatory on Mount Locke approximately 10 miles southeast of the intersection of State Highway 166 and State Highway 118 about 10 miles northwest of Fort Davis in Jeff Davis County, Texas.

CITY OF VALLEY MILLS has applied for a renewal of TNRCC Permit Number 10307-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The plant site is located approximately 1.0 mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 56, northeast of the City of Valley Mills in Bosque County, Texas.

The CITY OF VENUS has applied for a renewal of TNRCC Permit Number 10883-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The plant site is located approximately 0.5 mile northwest of the City of Venus at a point approximately 500 feet north of U.S. Highway 67 and approximately 200 feet west of Farm-to-Market Road 157 in Johnson County, Texas.

VIOLA JONES PARTNERSHIP, LTD. has applied for a renewal of TNRCC Permit Number 12839-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed

20,000 gallons per day. The plant site is located approximately 400 feet east of U.S. Highway 59 and 1500 feet south of the U.S. Highway 59 bridge over Wills Creek within the City of Seven Oaks in Polk County, Texas.

VLASIC FARMS, INC. has applied for a renewal of TNRCC Permit Number 02726, which authorizes the discharge of washdown water, utility wastewater and seepage from growing beds at a daily average flow not to exceed 75,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 02726. The applicant operates a mushroom farm and packaging plant. The plant site is located on the north side of Farm-to-Market Road 310, approximately 0.8 miles west of the intersection of Interstate Highway 35 and Farm-to-Market Road 310, and approximately four miles south of the City of Hillsboro, Hill County, Texas.

VULCAN CONSTRUCTION MATERIALS, LP, P.O. Box 791550, San Antonio, Texas 78279, has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0062120 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03957. The draft permit authorizes the discharge of washwater and storm water at a daily average flow not to exceed 3,600,000 gallons per day via Outfall 001 and stormwater on an intermittent and flow variable basis via Outfall 002. The applicant operates a limestone crushing plant. The plant site is located on the southwest band of the Brazos River at a point approximately 1.5 miles downstream of the Interstate Highway 20 Brazos River bridge in Parker 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 OF THE ISSUE DATE OF THE NOTICE.

Notice of Water Quality Applications(CAFO)

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.

DON MASSEY, Route 1 Box 180, Godley TX 76044 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04096 to authorize the applicant to expand an existing dairy operation from a maximum capacity of 250 head to 690 head in Johnson County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the south side of State Highway 4, 1.7 miles west of Farm-to-Market Road 2331, approximately four miles southwest of Godley, Texas. The facility is located in the drainage area of Brazos River below Lake Granbury in Segment Number 1204 of the Brazos River Basin.

JOCHUM SCHIEVINK, Route 5 Box 141, Dublin TX 76446 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit to amend State Permit Number 03200 to authorize the applicant to expand an existing dairy operation from a maximum capacity of 990 head to 1200 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the east side of County Road 285 two miles south of the intersection of County Road 285 with Farm-to-Market Road 219 approximately ten miles southeast of Dublin in Erath County, Texas. The facility is located in the drainage area of the Leon River below Proctor Lake in Segment Number 1221 of the Brazos River Basin.

DAVID AND ALAN SCREWS, Route 1 Box 348B, Pickton TX 75471 have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04089 to authorize the applicant to operate a dairy facility at a maximum capacity of 600 head in Hopkins County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The facility is located on the south side of Country Road 3385 in Hopkins County, Texas 0.75 miles west of the intersection of County Road 3385 and Farm -to-Market Road 3105. The City of Weaver, Texas is 6.2 miles north on Farm-to-Market Road 3105 from this intersection and is situated around Interstate Highway 30. The facility is located in the drainage area of the South Sulphur River in Segment Number 0303 of the Sulphur River Basin .

SEABOARD FARMS, INC. - WHITAKER SITE, P. O. Box 1207, Guymon OK 73942 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit Number 03702 to authorize the applicant to operate an existing swine operation at a maximum capacity of 23,040 head in Hansford County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located at the intersection of State Highway 207 and Farm-to-Market Road 2535 approximately six miles northeast of the City of Gruver in Hansford County, Texas. The facility is located in the drainage area of Hackberry Creek in Segment Number 0100 of the Canadian River Basin.

VALL, INC., 911 Texas Street, Texhoma, OK 73949 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04105 to authorize the applicant to operate a swine facility at a maximum capacity of 43,200 head in Sherman County, Texas. The facility will generate, collect and treat animal waste and wastewater on-site. All waste will be beneficially used on agricultural land. The proposed facility will be located on State Highway 15, approximately 8 miles east of the City of Stratford, Sherman County, TX. The facility will be located in the drainage area of the Canadian River below Lake Meredith in Segment Number 0100 of the Canadian River Basin.

TRD-9903736
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 22, 1999

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Proposal for Decision

The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 18, 1999 ; SOAH Docket Number 582-98-1976-IWD-E; TNRCC Docket Number 98-0484-IWD-E; In the matter to be considered by the Texas natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order.

Comment period will end 30 days from date of publication.

If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9903732
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: June 22, 1999

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Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; Texas Water Code, §5.122, which provides the commission with the authority to delegate to the executive director the commission's authority to act on certain matters; Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act; and General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding rule for Voluntary Cleanup Program.

The General Appropriations Act, Article IX, §167, requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed Chapter 333 and determined that the reason for their adoption continues to exist.

These rules are necessary to effectively administer, manage, and implement the Brownfields Initiatives (Subchapter A - Voluntary Cleanup Programs and Subchapter B - Innocent Owner/Operator Certification) in the state. These rules provide for the implementation and clarification of requirements set forth in the Voluntary Cleanup Program (VCP) and Innocent Owner/Operator Program (IOP) laws. The VCP rules establish procedures for the VCP including eligibility, public participation, partial cleanups, and effects on other program areas, and the IOP rules establish procedures for the IOP including eligibility, application requirements, information provided by adjacent owners/operators, withdrawal/denial of a certificate, and access.

The commission believes the rules affecting the VCP and IOP meet the commission's regulatory reform goals of clear succinct standards that establish appropriate administrative procedures, important flexibility, and necessary interpretation of statutory requirements. Therefore, the commission is not proposing any amendments to Chapter 333 as part of this rules review. In a separate action, however, the commission notes that amendments to Chapter 333, Subchapter A, were proposed on March 26, 1999 (24 TexReg 2186) to conform with the proposed Texas Risk Reduction Program (TRRP). If adopted, the proposed TRRP rule would guide the investigation, development of cleanup levels, and response actions for most remediations conducted under the agency's Office of Waste Management. The comment period for the proposed amendments to Chapter 333, Subchapter A, closed May 11, 1999.

A public hearing on this proposal will be held on July 13, 1999, at 10:00 a.m. in Room 254S of Texas Natural Resource Conservation Commission, Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments should be mailed to Ms. Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 2, 1999, and should reference Rule Log Number 99005-333-WS. For further information on the proposed review, please contact Pharr Andrews, Regulations Development Section, at (512) 239-6124 or Charles Epperson, Voluntary Cleanup Program at (512) 239-2498. Copies of the proposed review can be obtained via the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html, or by calling (512) 239-0028.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9903746
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 23, 1999

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Public Notices

The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the determination of the proposed non-residential future land use for the American Zinc Proposed State Superfund Site, located near the city of Dumas, approximately 3.5 miles north on U.S. 287 and 5 miles east on Farm Road 119.

Future land use determination will subsequently impact the remedial investigation and remedial action for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use and take comments on the facility before completing the remedial investigation and evaluating remedial actions for the site. The public meeting will be held in Council Chambers of Dumas City Hall located at 124 West 6th in Dumas, Texas on Thursday, August 5, 1999, beginning at 7:00 P.M. This public meeting will not be a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). After the subject meeting is held and future land use has been determined, a human health risk assessment, ecological risk assessment, and a feasibility study, or similar study, will be performed to evaluate various remedial action proposals. The TNRCC will then propose a selected remedy and hold another public meeting pursuant to the Texas Health and Safety Code, Chapter 361.187.

In accordance with the Texas Health and Safety Code, Chapter 361.1855, the TNRCC shall publish notice of the public meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 31 days before the date of the public meeting.

The American Zinc Site was originally proposed to be placed on the State Superfund list in the October 15, 1993, issue of *Texas Register* (18 TexReg 7201). The site was operated as a zinc smelter from the late 1930's until the late 1960's or 1970's, generating heavy metal

waste typical to that process. During World War II and for the major part of its lifetime, the smelting plant was the source of zinc in the United States' defense program. The abandoned smelting plant has been decommissioned since 1957.

The TNRCC is proposing a non-residential (industrial) future land use determination for consideration in implementing the human health risk , ecological risk assessment and feasibility study.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Mr. Michael Bame, Remediation Division, MC-143, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The Repository of Public Records for this site are available for public review during regular business hours at the Killgore Memorial Library, 124 South Bliss Avenue, Dumas, Texas, or at the Texas Natural Resource Conservation Commission, 12100 North Interstate Highway 35, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee. For further information, please call 1-800-633-9363.

TRD-9903744
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 23, 1999

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The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the determination of the proposed non-residential future land use for the McBay Oil & Gas State Superfund Site, located approximately three miles northwest of Grapeland, on FM 1272.

Future land use determination will subsequently impact the remedial investigation and remedial action for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use and take comments on the facility before completing the remedial investigation and evaluating remedial actions for the site. The public meeting will be held in Council Chambers at Grapeland City Hall, located at 126 South Oak, Grapeland, Texas on Thursday, August 12, 1999, beginning at 7:00 P.M. This public meeting will not be a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). After the subject meeting is held and future land use has been determined, a remedial investigation, human health risk assessment, ecological risk assessment, and a feasibility study, or similar study, will be performed to evaluate various remedial action proposals. The TNRCC will then propose a selected remedy and hold another public meeting pursuant to the Texas Health and Safety Code, Chapter 361.187.

In accordance with the Texas Health and Safety Code, Chapter 361.1855, the TNRCC shall publish notice of the public meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 31 days before the date of the public meeting.

The McBay Oil & Gas site was originally placed on the State Superfund list in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). From 1941 to 1959, the site was the location of an oil refinery. It then became a waste oil reclamation plant until all operations ceased in 1987.

The TNRCC is proposing a non-residential (industrial) future land use determination for consideration in implementing the human health risk , ecological risk assessment and feasibility study.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Mr. Michael Bame, Remediation Division, MC-143, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The Repository of Public Records for this site are available for public review during regular business hours at the Crockett Public Library, 708 East Goliad, Crockett, Texas, or at the Texas Natural Resource Conservation Commission, 12100 North Interstate Highway 35, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee. For further information, please call 1-800-633-9363.

TRD-9903745
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 23, 1999

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 17, 1999, U.S. OnLine Communications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60025. Applicant intends to transfer its SPCOA to USOL, Inc., a non-certificated entity.

The Application: Application of U.S. OnLine Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 20980.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public tility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 7, 1999. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20980.

TRD-9903701
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 1999

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Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 17, 1999, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Intetech, L.C. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Project Number 20987.

The Application: The intraLATA plan filed by Intetech, L.C. (Intetech) 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. Intetech holds Service Provider Certificate of Operating Authority (SPCOA) Number 60141.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before July 12, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20987.

TRD-9903729
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 1999

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Notice of Application for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(E)

Notice is given to the public of an application filed with the Public Utility Commission of Texas, on June 16, 1999, for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Project Title and Number: Application of Nortex Telcom, L.L.C. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §23.148. Project Number 20984.

The Application: Under 47 U.S.C. §214(e), a common carrier designated as an ETC in accordance with that subsection shall be eligible to receive federal universal service support under 47 U.S.C. §254. The Company seeks ETC designation for its entire certificated service area, which includes the exchange of Denton. Nortex holds Certificate of Operating Authority Number 50015. The earliest possible effective date is August 1, 1999, or 30 days after notice is completed whichever is later.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by July 22, 1999. Requests for further information should be mailed to 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 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735- 2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is July 22, 1999, and all correspondence should refer to Project Number 20984.

TRD-9903728
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 1999

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Notices of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 16, 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 ClearWorks Technologies, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20981 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based local telecommunications service, including flat-rate local exchange service, extended area service , toll restrictions, call control options, tone dialing, custom calling services, Caller ID, and any other services which are available on a resale basis from the underlying incumbent local exchange carrier or other certificated carrier within the Applicant's service area.

Applicant's requested SPCOA geographic area comprises the Houston Local Access and Transport Area within the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than July 7, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903678
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 16, 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 Line Drive Communications, Inc. of Addison for a Service Provider Certificate of Operating Authority, Docket Number 20982 before the Public tility Commission of Texas.

Applicant intends to provide the entire range of voice grade and data telecommunications services to business and residential customers by offering resold services and by providing services using unbundled network elements combined with the Applicant's facilities.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than July 7, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903679
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 18, 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 FirstWorld Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20993 before the Public Utility Commission of Texas.

Applicant intends to provide dialtone, IP-based services, packet based services, and connectivity to the Internet, and data-oriented switching equipment.

Applicant's requested SPCOA geographic area includes the geographic area currently served by all incumbent local exchange companies.

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 July 7, 1999. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903702
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 1999

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Notices of 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 June 15, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Application of GTE-Southwest, Inc. to Modify Tariff Terms of IN CONTACT Service and the Flexible Call Forwarding Option of Custom Routing Service Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20976.

The Application: GTE-Southwest, Inc. (GTE) has notified the Public Utility Commission of Texas that it intends to clarify its General Exchange Tariff as it relates to Advanced Intelligent Network (AIN) functionality and Custom Routing Service. The four parts to this filing involve: 1) moving the current AIN service of IN CONTACT to the obsolete section of the tariff. GTE's proposal is to "grandfather" the service to the current list of customers and only offer Enhanced Call Forwarding to new customers wishing the AIN functionality. GTE is offering Enhanced Call Forwarding for AIN functionality, which is considered a better product; 2) moving the Flexible Call Forwarding feature to the obsolete section of the tariff. GTE proposes to "grandfather" Flexible Call Forwarding as it is currently offered as an option of Custom Routing Service; 3) clarifying the tariff language associated with Custom Routing Service to ensure consistency in its offering; and 4) updating the index sheet of the obsolete section of the tariff to correctly reflect the obsolete services contained in that section of the tariff.

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 July 12, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903741
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 21, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Application of Southwestern Bell Telephone Company to Revise the Integrated Services Tariff, Section 3, DigiLine Service to Implement a Non-Rate Affecting Change to the Current Terms for DigiLine Service Disconnected Prior to the Expiration of the Service Terms Agreement Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 21008.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public tility Commission of Texas that it is implementing a non-rate affecting change to the current terms for DigiLine Service disconnection prior to the expiration of the service term agreement. This change would allow customers who have had DigiLine Service for at least six months to disconnect their service prior to the expiration of the service term agreement without incurring any termination charges as long as they subscribe to a comparable quantity of another Southwestern Bell digital service that is of equal or greater speed for a term greater than or equal to the number of months remaining in the DigiLine Service term agreement.

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 July 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903742
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 1999

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §25.192(a)(5) and §25.198(d)

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 17, 1999 to introduce new rates or terms pursuant to Public Utility Commission Substantive Rule §25.192(a)(5) and §25.198(d), for Short-Term Planned Transmission Service Rates.

Tariff Title and Number: Application of TXU Electric Company for Short-Term Planned Transmission Service Rates, pursuant to Public Utility Commission Substantive Rules §25.192(a)(5) and §25.198(d). Tariff Control Number 20991.

The Application: TXU Electric Company (TXU Electric) formerly known as Texas Utilities Electric Company, filed the proposed Short-Term Planned Transmission Service Rates for all wholesale electricity market participants receiving service over TXU Electric's electric facilities rated at 60-kV and above, for delivery of electric power and energy from planned resources to loads, on a short-term basis. The

rate schedule is not applicable to service offered by TXU Electric under another rate schedule.

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 within ten days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903697
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 17, 1999 to introduce new rates or terms pursuant to Public Utility Commission Substantive Rule §25.192(a)(5) and §25.198(d) for Short-Term Planned Transmission Service Rates.

Tariff Title and Number: Application of TXU SESCO Company for Short-Term Planned Transmission Service Rates, pursuant to Public Utility Commission Substantive Rules §25.192(a)(5) and §25.198(d). Tariff Control Number 20992.

The Application: TXU SESCO Company (SESCO) formerly known as Southwestern Electric Service Company, filed the proposed Short-Term Planned Transmission Service Rates for all wholesale electricity market participants receiving service over SESCO's electric facilities rated at 60-kV and above, for delivery of electric power and energy from planned resources to loads, on a short-term basis. The service is limited to electrical loads not otherwise contractually obligated to receive electric service from SESCO.

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 within ten days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903698
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 1999

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Public Notices of Amendments to Interconnection Agreements

On June 15, 1999, Southwestern Bell Telephone Company and CSW/ICG ChoiceCom, L.P. n/k/a ICG ChoiceCom, L.P., 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 20973. The joint application and the underlying amendment to the 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 20973. 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 July 16, 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 20973.

TRD-9903634
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 1999

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On June 18, 1999, Southwestern Bell Telephone Company and C2C Fiber, 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 21005. 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 21005. 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 July 21, 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 21005.

TRD-9903739
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 1999

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On June 21, 1999, Southwestern Bell Telephone Company and Telenetwork, 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 21009. 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 21009. 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 July 21, 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 21009.

TRD-9903740
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 1999

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Public Notices of Interconnection Agreements

On June 15, 1999, TXU Communications Telephone Company (formerly known as Lufkin-Conroe Telephone Exchange, Inc.) and Texas RSA 10B3 Limited Partnership, collectively referred to as

applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20971. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20971. 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 July 21, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20971.

TRD-9903632
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 1999

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On June 15, 1999, TXU Communications Telephone Company (formerly known as Lufkin-Conroe Telephone Exchange, Inc.) and GTE Wireless of Houston Incorporated, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas tilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20972. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20972. 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 July 21, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20972.

TRD-9903633
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 1999

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Request for Comments on a Renewable Energy Goal and Notice of Workshop

The Public Utility Commission of Texas (commission) has initiated Project Number 20944 to adopt a rule relating to a statewide goal for renewable energy in response to new legislation that includes such a goal, Texas Utilities Code §39.904. This section was enacted in Senate Bill 7, 76th Legislature, Regular Session (1999), effective September 1, 1999. The commission is directed to adopt rules to implement this section by January 1, 2000. The commission seeks comments and information from interested parties in response to any or all of the following questions.

Scope of Rule

1. (a) Based on the terms of §39.904, it appears that the rule should address performance measures for renewable energy resources, a credit trading program, the allocation of the statewide goal for renewable energy resources among retail electric providers and those municipally owned utilities and electric cooperatives that offer customer choice, and the administration of the program, including penalties for failure to meet the goals. Are there other broad areas that the rule should address to implement §39.904?

(b) The legislative intent embodied in §39.904 is to create a program that results in the addition of 2,000 MW of new renewable capacity by 2009. Given this intent, how should existing renewable capacity be treated in the context of the trading program? If existing capacity is excluded from the trading program, what is the proper distinction between existing versus new renewable capacity?

Trading of Credits

2. To meet goals relating to new renewable generating capacity in an economical and efficient manner, the Commission has identified two options for a renewable credit trading program. One option is based on trading credits in capacity that is connected to the electric grid and meets certain performance standards. A second option is based on trading credits in electric energy generated by a facility. Please discuss the benefits and drawbacks of each approach or discuss another alternative that would meet the intent of §39.904. Please include the following in your discussion:

(a) What are the characteristics of a successful trading program?

(b) How should the trading program be managed? Should a neutral third party, such as a commodities exchange, play a formal role in the trading program? Can the commission instead rely on the marketplace to develop an exchange or exchanges?

(c) What type of commission oversight is needed to ensure that the trading program achieves the statutory requirements? What type of enforcement mechanisms are appropriate to ensure compliance?

(d) How could the trading program incorporate banking of credits over time and still meet capacity targets?

(e) If a trading program is denominated in energy rather than "installed renewable capacity," what conversion factors (and other considerations) should be used to convert from capacity to energy?

3. (a) Will the design of the credit trading program affect the decision of municipal utilities and cooperatives to offer customer choice in their service areas?

(b) How should the options outlined in §39.904 (e) and (f) for municipally owned utilities operating gas distribution systems be reflected in the rule?

Allocation of Responsibility

4. How should the renewable-energy requirement in §39.904 be allocated among retail electric providers and those municipally owned utilities and electric cooperatives that offer choice?

Performance Standards

5. In light of your recommendations relating to the trading of credits, please address the following issues:

(a) What performance standards are necessary to satisfy the requirements of §39.904(c)(2)?

(b) If you believe that different performance standards are needed for each type of renewable technology, please specify the respective renewable energy technology for which each performance standard should be used.

Other Comments

6. Please provide any other comments that you believe will assist the commission in implementing §39.904 in an efficient manner.

Comments on the above questions (15 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326. All comments should refer to Project Number 20944. Comments must be received by 3:00 p.m. on Monday, July 12, 1999. The commission will hold a public workshop at the commission's offices at the address listed above on Tuesday, July 27, 1999, at 9:30 a.m. in the Commissioner's Hearing Room. Questions should be directed to Jodie Smith-Brown at (512) 936-7387 or Gillan Taddune at (512) 936-7223. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903695
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 1999

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Teacher Retirement System of Texas

Request for Proposal

The Teacher Retirement System of Texas (TRS) is issuing a request for proposals (RFP), under the provisions of Chapter 2254 of the Government Code, to assist TRS in employing a Chief Investment Officer. TRS will engage a consultant to advise and assist the agency in an extensive search for candidates for the position, identifying qualified persons interested in accepting the position, recommending such persons to TRS for consideration, and conducting background checks, evaluating and developing descriptive portrayal portfolios for each of the recommended candidates.

In identifying and evaluating the candidates, the consultant must work closely with TRS to develop and apply approved criteria and qualifications for the positions. The consultant must report regularly on its progress and be available through a designated contact to consult with TRS by telephone, in writing, or in person as requested during the contract period.

A copy of the complete RFP may be obtained by writing or calling Shari Cooper, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701, telephone (512) 397-6400.

The deadline for receipt of proposals in response to the RFP is 5 p.m., July 26, 1999.

Proposals must include complete descriptions of services and activities to be undertaken, the cost of such services and activities, and the relevant experiences and qualifications of the applicant.

A successful proposal will be selected on a number of criteria, some of which include:

(1) compliance of the proposal with the RFP;

(2) the quality and appropriateness of the proposal;

(3) the experience, qualifications, and record of achievement of the proposer;

(4) adequacy of the resources to be committed to the project;

(5) and the proposal that, in the judgment of TRS, represents the best combination of demonstrated competence, knowledge, qualifications, and reasonableness of the proposed fee.

TRS reserves the right to reject any or all proposals submitted. The selected consultant must execute a contract acceptable to TRS. TRS specifically reserves the right to vary any or all provisions set forth at anytime prior to the execution of the contract where TRS deems it to be in the best interest of TRS. TRS shall not be responsible for cost of applicants in responding to the RFP or in negotiating project terms.

TRD-9903761
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: June 23, 1999

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Texas Department of Transportation

Public Notice

Pursuant to 43 TAC §2.43(e)(3), the Texas Department of Transportation (TxDOT) is issuing a Notice of Intent (NOI) to advise the public that an environmental impact statement will be prepared for the Trinity Parkway reliever route, from the SH-183/IH-35E interchange to the SH-310/US-175 interchange, to relieve traffic congestion on IH-35E and IH-30 within the City of Dallas. In 1998, a Major Transportation Investment Study (MTIS) was completed by TxDOT in order to develop a locally-preferred plan to solve transportation problems along the Trinity River corridor in Dallas, and to integrate with community plans and goals for Trinity River resources. The study was focused on transportation needs in the IH-35E/IH-30 interchange on the west side of downtown Dallas, locally known as the "Mixmaster," and the depressed segment of IH-30 south of downtown, locally known as the "Canyon." The MTIS Recommended Plan of Action is comprised of seven elements, which include improvements to existing facilities, improving alternative transportation modes, and constructing a reliever route along the Trinity River. The MTIS considered in detail four corridors for the proposed reliever route. These included Stemmons Freeway (IH-35E), Industrial Boulevard, the east Trinity River levee, and the west Trinity River levee.

During the MTIS process, numerous alternatives were evaluated for the reliever roadway. The analysis of effects of each of the reliever roadway alternatives included the estimation of construction and right-of-way costs, traffic capacity considerations, effect on natural and cultural assets, effect on social and economic conditions, impacts on Trinity River projects, number of displacements, effect on access to adjacent properties, and difficulty/disruption in construction. From the preliminary alternatives considered, four build alternatives, one along existing Industrial Boulevard and three along the Trinity River levees, were identified as potential alternative alignments that warrant further study. The principal variations of the three alternatives along the Trinity River levees consist of a combined roadway with eight general purpose lanes along the river side of the east levee; a split parkway with four general purpose lanes along the river side of both levees; and a split parkway with four general purpose lanes along the land side of both levees. The Industrial Boulevard alternative consists of an elevated roadway (double-deck) with eight general purpose lanes and two high-occupancy vehicle (HOV) lanes. These alternatives and the no-build alternative, along with any other reasonable alternatives identified during the scoping and public involvement processes, will be analyzed in further detail during the EIS review process.

The EIS will include a discussion of the effects of other known and reasonably foreseeable agency actions proposed within the Trinity Parkway corridor study area, which include proposed projects by the US Army Corps of Engineers (USACE) and the City of Dallas. The USACE has proposed flood control improvements consisting of the proposed Dallas Floodway Extension, which encompasses the Dallas Floodway from the AT&SF Railroad near Corinth Street to IH-20, and proposed flood control improvements from the AT&SF Railroad to Royal Lane in Dallas. The USACE has submitted a final EIS for the proposed Dallas Floodway Extension project. The proposed flood control improvements between the AT&SF Railroad and Royal Lane will be evaluated as part of a Programmatic EIS to be completed by the USACE for the Trinity River complex from the southern boundary of Dallas County to the upper reaches of the Trinity River Elm Fork, West Fork, and Clear Fork. The City of Dallas has proposed various Trinity River floodway improvements, which include the construction of lakes, wetlands, hike and bike trails, parks, and other recreational amenities. This project is identified as the City of Dallas Trinity River Master Implementation Plan and is currently in the planning stage.

A public scoping meeting is planned to be held in the summer of 1999. The date will be announced locally at a later time. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning the proposed action and the EIS should be directed to H. Stan Hall, P. E., District Advance Project Development Engineer, P. O. Box 3067, Dallas, Texas 75221-3067 or by telephone at (214) 320-6155.

TRD-9903753
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: June 23, 1999

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