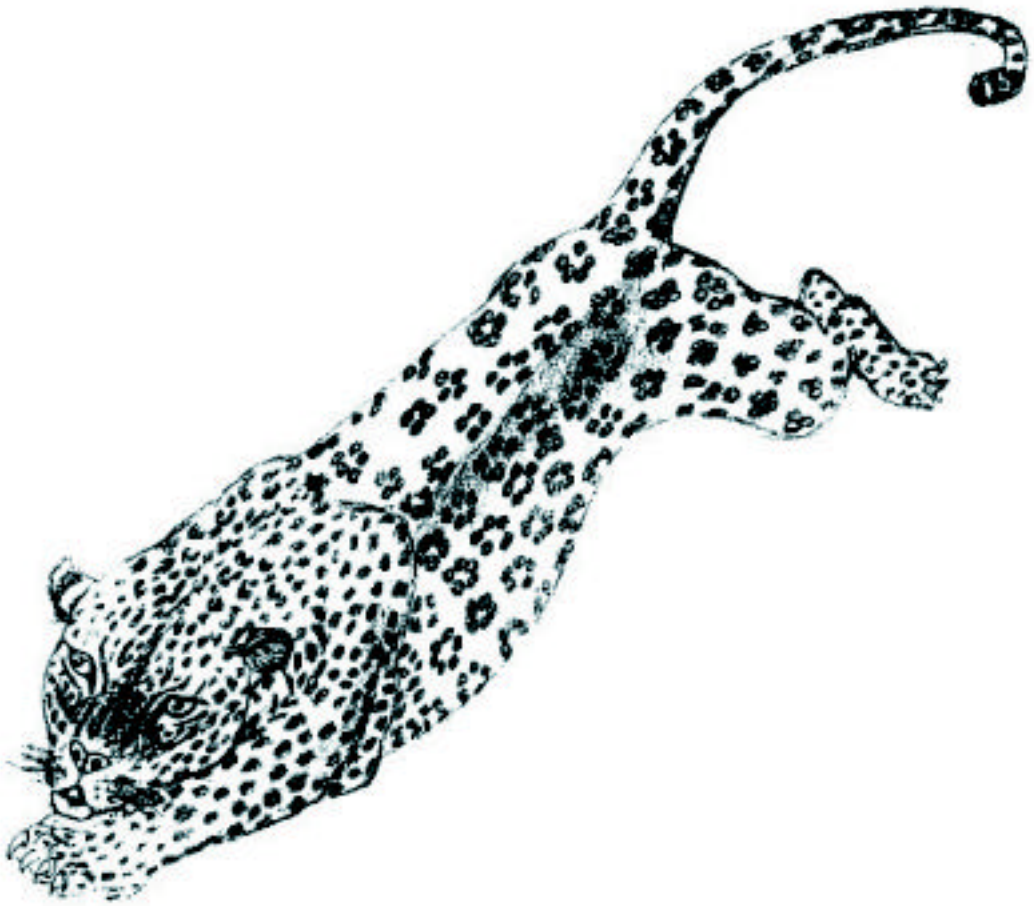
TEXAS REGISTER

Volume 25 Number 20 May 19, 2000 *Pages 4397-4648*



This month's front cover artwork:

Artist: *Ofelia Rico*

11th Grade

Valley View High School

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

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

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

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

***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 Paid at Austin, Texas.

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

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us

Secretary of State - Elton Bomer

Director - Dan Procter
Assistant Director - Dee Wright

Receptionist - Brett Tiedt

Texas Administrative Code
Dana Blanton
Roberta Knight

Texas Register
Carla Carter
Tricia Duron
Ann Franklin
Kris Hogan
Diana Muniz-Franklin
Becca Williams

Circulation/Marketing
Jill S. Ledbetter
Liz Stern

OFFICE OF THE ATTORNEY GENERAL

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

Open Records Request

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than June 2, 2000.

No requestor. Pursuant to section 552.011 of the Texas Government code, in order to maintain uniformity in the application, operation and interpretation of the Public Information Act, this office will prepare and publish a formal decision on the following issue.

ORQ-52. Re: Whether an individual's social security number is protected from required public disclosure under section 552.101 of the Government Code as information considered to be confidential by law, either by statute or by constitutional or common law privacy.

TRD-200003309
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 10, 2000

♦ ♦ ♦

Opinions

Opinion No. JC-0214

The Honorable Tim Curry, Tarrant County Criminal District Attorney, 401 West Belknap Street, Fort Worth, Texas 76196-0201

Re: Questions relating to a conflict between the sheriff and commissioners court of Tarrant County with regard to their respective authority over budgetary matters (RQ-0144-JC)

S U M M A R Y

The commissioners court of a county, in the exercise of its authority to set a county budget, may take a different view of the importance of certain functions than does an elected officer and may budget that officer less money to perform that function than he requests. It may not prevent him thereby from performing his statutorily mandated duties. However, in determining whether the commissioners court has abused its discretion in this regard, the district court may not substitute its view of sound public policy for that of the commissioners.

While vehicles allotted by the commissioners court to an elected county officer are county property rather than the property of the officer, once such resources have been allocated to an elected officer the commissioners may not substitute their judgment as to the deployment of those resources for the officer's.

The commissioners court having set the number of positions in a county office for the budget year, discretion as to how to deploy such manpower belongs to the officer.

A county vehicle policy requiring a county officer to relinquish control of vehicles in use when he takes possession of their replacements is a budgetary safeguard within the discretion of the commissioners court. Accordingly, should the officer refuse to comply with the policy, the court may refuse to provide the replacement vehicles.

The power to set minimum bid specifications for equipment or vehicles to be purchased by competitive bidding resides in the commissioners court. The court may wish to consult with the officer who will ultimately use such equipment, but is not obliged to agree with the officer's views in this regard.

Opinion No. JC-0215

The Honorable Susan D. Reed, Bexar County Criminal District Attorney, Bexar County Justice Center, 300 Dolorosa, Fifth Floor, San Antonio, Texas 78205-3030

Re: Whether a magistrate may require a bailable criminal defendant to satisfy a "split bond" (part personal bond, part bail bond backed by a surety), and related question (RQ-0159-JC)

S U M M A R Y

A court may not require a bailable defendant to satisfy a "split bond," where "a portion of the bond amount [is] designated a personal bond . . . and . . . the remaining portion of the bond amount [is] a secured bail bond backed by a surety."

Opinion No. JC-0216

The Honorable Richard J. Miller, Bell County Attorney, P.O. Box 1127, Belton, Texas 76513

Re: Whether an elected junior college trustee may simultaneously serve as a municipal judge (RQ-0171-JC)

S U M M A R Y

An elected trustee of Central Texas College is not prohibited by article XVI, section 40, or article II, section 1 of the Texas Constitution, or by the common-law doctrine of incompatibility from simultaneously serving as a municipal judge for the City of Killeen.

Opinion No. JC-0217

The Honorable John T. Smithee, Chair, House Committee on Insurance, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether Randall County may be divided into fewer than four justice of the peace and constable precincts (RQ-0156-JC)

S U M M A R Y

Randall County, pursuant to the specific authority provided it by article V, section 18(a) of the Texas Constitution, may divide itself into fewer than four justice of the peace and constable precincts. However, pursuant to article V, section 18(b), it must remain divided into four commissioners precincts.

For further information, please call (512) 463-2110

TRD-200003273
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 9, 2000

♦ ♦ ♦

Request for Opinions

RQ-0223-JC

The Honorable Eddie Lucio, Jr., Chair, Special Committee on Border Affairs, Texas State Senate, P.O. Box 12068 Austin, Texas 78711

Re: What constitutes an "improvement" for purposes of section 1.04 of the Tax Code and related questions (Request No. 0223-JC)

Briefs requested by June 4, 2000

RQ-0224-JC

The Honorable A. J. (Jack) Hartel, Liberty County Attorney, P.O. Box 9127, Liberty, Texas 77575-9127

Re: Whether a county treasurer may delegate her duties to a deputy (Request No. 224-JC)

Briefs requested by June 4, 2000

RQ-0225-JC

Mr. Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, P.O. Box 2018 Austin, Texas 78768-2018

Re: Whether the Board of Medical Examiners may release certain information to the federal Equal Employment Opportunity Commission (Request No. 0225-JC)

Briefs requested by June 5, 2000

RQ-0226-JC

The Honorable Ken Armbrister, Chair, Committee on Criminal Justice, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether information made confidential by section 143.089(g) of the Local Government Code may be released to the city manager and the city attorney (Request No. 0226-JC)

Briefs requested by June 5, 2000

TRD-200003274
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 9, 2000

♦ ♦ ♦

TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Requests

AOR-471. The Texas Ethics Commission has been asked to consider whether a legislator is subject to any reporting requirements or restrictions in connection with gifts and invitations to the legislator's child.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200003199
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: May 8, 2000

♦ ♦ ♦

Opinions

EAO-427. Whether the gift restrictions in the Penal Code or the expenditure restrictions in the lobby law prohibit a person from making a gift to charity in the name of a legislator or other public servant. (AOR-470)

SUMMARY. A charitable contribution made in honor of a public servant is not a "benefit" to the public servant if the public servant does not exercise discretion over the decision to make the contribution to a particular organization.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200003200
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: May 8, 2000

♦ ♦ ♦

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 31. NATURAL RESOURCES AND CONSERVATION

Part 20. EDWARDS AQUIFER AUTHORITY

Chapter 719. EMERGENCY DROUGHT MANAGEMENT PLAN RULES FOR 2000

The Edwards Aquifer Authority ("Authority") adopts, on an emergency basis, the following new rules: §§719.1, 719.120, 719.122, 719.124, 719.126, 719.128, 719.130, 719.132, 719.134, 719.136, 719.138, 719.140, 719.142, 719.144, 719.146, 719.148, 719.150, 719.152, 719.154, 719.156, 719.157, 719.158, 719.160, 719.162, 719.164, concerning the Emergency Drought Management Plan Rules for 2000 and these emergency rules specify mandatory restrictions on the use of groundwater from the Edwards Aquifer designed to slow, stop, or reverse the decline of water levels in the aquifer and springflows at Comal and San Marcos Springs.

Emergency Rules Summary

The emergency rules establish three emergency drought management areas, three emergency drought stages, a mechanism for reporting aquifer use, a requirement for emergency drought or critical period ordinances to be adopted by municipalities and approved by the Authority, and reductions in aquifer use. Municipal users are allowed to develop their own rules for their customers that are within their jurisdictions, and industrial users are allowed to develop their own plan to achieve the reductions. The emergency rules generally apply to all existing users who have applied to the Authority for an initial regular permit and all owners of wells which are exempt from the permitting requirements of the Act.

The three emergency drought management areas are:

(1) The East Area, which consists of those portions of Bexar, Comal, Hays, Caldwell and Guadalupe Counties which are within the Authority's boundaries;

(2) The Medina/Atascosa Area, which consists of those portions of Medina and Atascosa Counties which are within the Authority's boundaries; and

(3) The Uvalde/Atascosa Area, which consists of Uvalde County.

The rules impose three emergency drought management stages which apply to each area based upon aquifer conditions. In the East Area, Stage I applies when index well J-17 is at or below 650 feet above mean sea level (" ft. m.s.l.") and above 640 ft. m.s.l.; Stage II applies when well J-17 is at or below 640 ft. m.s.l. and above 630 ft. m.s.l.; and Stage III applies when well J-17 is at or below 630 ft. m.s.l.

In the Medina/Atascosa Area, Stage I applies when index well TD 69-47-306 (the "Medina Well") is at or below 670 ft. m.s.l and above 660 ft. m.s.l.; Stage II applies when the Medina Well is at or below 660 ft. m.s.l. and above 655 ft. m.s.l.; and Stage III applies when the Medina Well is at or below 655 ft. m.s.l.

In the Uvalde Area, Stage I applies when index well J-27 is at or below 845 ft. m.s.l and above 840 ft. m.s.l; Stage II applies when well J-27 is at or below 840 ft. m.s.l. and above 835 ft. m.s.l; and Stage III applies when well J-27 is below 835 ft. m.s.l.

During Stage 1:

Applicants must submit monthly water use reports to the Authority.

Municipal and industrial applicants must reduce to 95% of their monthly pumping schedule.

Residential landscape watering is restricted to one day per week in the morning and evening.

Municipalities which are permit applicants must designate days of the week which customers within their jurisdiction may conduct landscape watering.

Use of Edwards Aquifer water for ornamental fountains or similar features is prohibited.

During Stage II, in addition to the restrictions in place for Stage I:

Municipal and industrial applicants must reduce to 90% of their monthly pumping schedule.

Residential landscape watering is further restricted to one day per week with shorter morning and evening hours.

Restrictions are imposed upon filling and draining swimming pools.

During Stage III, in addition to the restrictions in place for Stages I and II:

Municipal and Industrial applicants must reduce to 85% of their monthly pumping schedule.

Residential landscape watering is prohibited, with the exception of using a hand-held bucket, hand-held hose, soaker hose, or properly installed drip irrigation system.

Applicants must submit weekly withdrawal reports to the Authority.

Municipalities and municipal water distribution systems are to encourage water conservation by their customers by imposing water rates which increase as a customer's usage increases.

Irrigation of new crops is generally prohibited.

The rules also require owners of golf courses or athletic fields who have applied for a permit or who are dependent upon water from the aquifer to submit a groundwater conservation plan to the Authority, and to reduce to 95%, 90% or 85% of their monthly pumping schedules in Stages 1, 2, and 3, respectively, or, alternatively, to reduce their replacement of daily evapotranspiration rate ("ET rate") by a series of percentages during the Stages. Such golf course or athletic field owners must also make and maintain certain daily water records.

The rules impose a number of additional provisions and requirements including:

extensive water use reporting requirements; and

a mechanism whereby an applicant may request and obtain from the Authority a variance from the rules.

The Need for Emergency Rules

Current conditions within the Edwards Aquifer and at Comal and San Marcos Springs necessitate the adoption of these rules on an emergency basis. The Authority is currently in the process of developing and adopting, pursuant to the regular rulemaking process specified in the Texas Administration Procedure Act, a set of drought management rules similar to these emergency rules. In the meantime, however, current aquifer and springflow conditions warrant adoption of emergency rules immediately.

Comal and San Marcos Springs are the primary natural outflows from the Aquifer. There are at least six species which are directly dependent upon Comal Springs and/or San Marcos Springs and which are federally-listed as endangered or threatened pursuant to the Endangered Species Act, 16 U.S.C.A. §§1531-1544 (the "ESA"). Those species are: the fountain darter *(Etheostoma fonticola)*, the San Marcos gambusia *(Gambusia georgei)*, Texas wild-rice *(Zizania texana)*, the San Marcos salamander *(Eurycea nana)*, the Peck's Cave amphipod *(Stygobromus pecki)*, and the Comal Springs riffle beetle *(Stygoparnus comalensis)*.

The United States Fish and Wildlife Service ("FWS") is the federal agency primarily responsible for implementing and enforcing the ESA. FWS has determined that maintaining adequate discharge at the springs is one of the major requirements to protect threatened and endangered species that depend upon the Comal and San Marcos Springs ecosystems. Reduced spring discharges threaten the endangered species by decreasing available habitat, decreasing available food supply, increasing competition from native and exotic species, increasing water temperature, and decreasing dissolved oxygen. FWS has made determinations relative to minimum springflows necessary for certain of these species. It is the Authority's understanding that FWS currently contends that the fountain darter, San Marcos gambusia, and Texas wild-rice are generally "taken," i.e. killed or injured, when springflow at San Marcos Springs drops to below 100 cubic ft. per second ("c.f.s."). FWS also currently contends that when San Marcos springflow drops to 100 c.f.s., there is an appreciable reduction in the likelihood of survival and recovery of these three species (i.e. "jeopardy " conditions exist), and there is an appreciable diminution of the value of critical habitat for the survival and recovery of these species (i.e. destruction or adverse modification of critical habitat occurs).

The FWS has made similar general determinations of the springflow needs of the fountain darter in Comal Springs. Those numbers are: (1) 200 c.f.s. for "take"; and (2) 150 c.f.s for "jeopardy."

With respect to the threatened or endangered species found within the Comal and San Marcos Springs, the Authority, pursuant to §§1.14(a) and (h) of the Edwards Aquifer Authority Act, has broad powers and responsibilities to take measures designed to protect these species. In order to achieve that objective, the Authority is currently engaged in a large-scale project to develop a habitat conservation plan, or HCP, for the management of the aquifer and protection of the listed species. Any such HCP will ultimately be approved by FWS before it is implemented. The HCP is a long-term project which will likely take many months for completion. In the meantime, the Authority believes these emergency rules are needed as a short-term remedy.

The Authority does not concede that it can legally be held directly liable for a "take" of the species based upon diminished springflows. It has, however, been advised by FWS that FWS may seek to hold the Authority liable for a "take" under the ESA if springflows drop below these specified levels. Likewise, the Authority does not concede that the springflow numbers currently relied upon by FWS accurately reflect when "take," "jeopardy" or adverse habitat modification occur. The Authority believes that, as more biological data on the species is developed, these flow numbers might be revised. It is hoped that the Authority's HCP project will lead to such revisions. In the meantime, however, the Authority has determined that it needs to implement these emergency rules in order to reduce aquifer withdrawals and thereby increase, or at a minimum, slow decreases in flows at Comal and San Marcos Springs in order to protect these species.

Spring discharge is a function of groundwater elevation in the aquifer. The Authority maintains a series of observation and index wells across the region to gauge groundwater elevations in the aquifer. The index well for Medina and Atascosa Counties (Hondo Well) and the index well for Bexar, Comal, Caldwell, Guadalupe, and Hays Counties (J-17) have indicated a sharp drop over the preceding 10 days (attached Figure 1). Comal Springs has also shown a corresponding decrease in discharge. J-17 is used to predict trends in the aquifer because it has a very good correlation to spring flow at Comal Springs. In addition, San Marcos Springs has a significant regional flow component from the western region which increases as aquifer levels drop.

Aquifer levels are decreasing because of hot and dry weather across the region and the subsequent increase in demand by municipal and agricultural users. Long-range weather predictions indicate that these conditions will most likely persist. In addition, the months of May, June, July, and August have historically been high demand periods for the region that will put an additional stress on aquifer levels.

Groundwater discharge at San Marcos Springs has been above 100 c.f.s. for a number of months; however, increased demand of groundwater across the region resulted in San Marcos Springs reaching 98 c.f.s. on April 30, 2000. In addition, Comal

Springs is also expected to reach 200 c.f.s. by the third week in May.

Figure 1 is a graph of groundwater elevations at the J-17 Index Well for the previous nine months. A trend analysis of the data for the period between November 1999 and mid April 2000 indicated that the aquifer would not drop below 650 feet mean sea level (msl) during the high demand summer months. An elevation of 650 feet msl in J-17 is approximately equal to 200 cfs at Comal Springs. Generally, demand during the late fall and winter months decreases and the aquifer levels rebound as recharge surpasses discharge. This trend is indicated in Figure 1 for the October-November time period in 1999. However, an unexpected acceleration in the rate of decline since April 16, 2000 has indicated a much greater rate of decrease, with J-17 dropping below 650 feet msl on April 30, 2000.

A reduction in aquifer demand through implementation of these rules at this time will help limit the rate of decline of the aquifer and help mitigate impacts of dry weather and groundwater demand on San Marcos and Comal Springs until wetter and cooler weather returns.

For these reasons, these rules are adopted on an emergency basis because the Authority finds that an imminent peril to public health, safety or welfare and a requirement of federal law requires adoption of these rules on fewer than 30 days' notice. As explained more fully above, declining aquifer and springflow levels create an imminent peril to the well-being of federally-listed species in Comal and San Marcos Springs. Congress, through the passage of the ESA, has determined that protection of endangered species is of the utmost importance to mankind.

It is in the best interests of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.1 (1 H.R. Rep. No. 93-412, 93d Cong., 1st Sess., pp. 4-5 (1973) (Committee report on statutory precursor to the ESA)).

Declining springflows, therefore, create an imminent threat to public health, safety and welfare which requires adoption of these rules on fewer than 30 days' notice.

Further, based upon current aquifer conditions combined with the approach of the typically "high-demand" months of May, June, July and August, springflow rates and aquifer levels could continue to decline precipitously. The Authority believes that quick implementation of the aquifer withdrawal reduction measures mandated by these rules will reduce the likelihood of the need to impose more draconian demand management measures at a later time, thereby averting negative economic impacts and other threats to the public welfare in the region.

Finally, as explained more fully above, because dropping springflow levels threaten the listed species at Comal and San Marcos Springs, federal law (the "ESA") requires adoption of these rules on fewer than 30 days' notice.

The Authority has determined that a local employment impact statement ("LEIS"), pursuant to §2001.022 of the TEXAS GOVERNMENT CODE, is not required for the adoption of these emergency rules because the requirement to prepare an LEIS is made explicitly inapplicable to the adoption of emergency rules pursuant to TEXAS GOVERNMENT CODE §2001.022(g).

The Authority has determined that a regulatory impact analysis of major environmental rules ("RIAMER"), pursuant to §2001.0225 of the TEXAS GOVERNMENT CODE, is not required for the adoption of these emergency rules. This conclusion has been reached for the following reasons: First, the requirements of §2001.0225 do not apply to rules proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. *See*, TEXAS GOVERNMENT CODE §2001.0225(h). These emergency rules fall well within the scope of this exception. Second, because emergency rules may, pursuant to TEXAS GOVERNMENT CODE §2001.034(a), be adopted without any prior notice or hearing, compliance with the "notice", "draft impact analysis" and "final regulatory analysis" required by §2001.0225 would be impossible during emergency rulemaking.

The Authority has determined that a small business effects statement ("SBES"), pursuant to Chapter 2006, subchapter A, TEXAS GOVERNMENT CODE, is not required for the adoption of these emergency rules. The basis for this determination is that the Act does not itself make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE. Further, the Authority has determined that, as a matter of law, chapter 2006, Subchapter A, is inapplicable to emergency rulemaking.

The Authority has determined that the preparation of a Takings Impact Assessment ("TIA") pursuant to Subchapter C, Chapter 2007, TEXAS GOVERNMENT CODE (the "Property Rights Act") is not required in connection with the Authority's adoption of these emergency rules. This determination has been reached for the following reasons: First, the procedural requirements of the Property Rights Act are incompatible with the requirements concerning emergency rulemaking set forth in TEXAS GOVERNMENT CODE ANNOTATED §2001.034. In the event of an unreconcilable conflict between two statutes, the more specific statue (in this case, TEXAS GOVERNMENT CODE ANNOTATED §2001.034) prevails. Second, all actions of the Authority are excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(11)(C). Third, the Authority's adoption of these emergency rules are actions reasonably taken to fulfill an obligation mandated by state and federal law and is therefore excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4). Finally, the Authority's adoption of these emergency rules is an action taken in response to a real and substantial threat to public health and safety and is therefore excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(13).

Expedited Effective Date Notice

These emergency rules shall be effective immediately upon filing with the Secretary of State and shall be effective for 120 days, unless renewed by the Authority. Pursuant to §2001.034 and §2001.036 of the TEXAS GOVERNMENT CODE and as explained more fully above, the Authority finds that this expedited effective date is necessary because of imminent peril to the public health, safety or welfare.

Subchapter A. DEFINITIONS

31 TAC §719.1

The new rules are adopted on an emergency basis by the Authority pursuant to §§1.08(a), 1.11(a), 1.14(a), (f) and (h), 1.15(a), 1.17(b) and (c), and 1.26 of the Act of May 30, 1993, 73rd Legislature Regular Session, chapter 626, 1993 TEXAS GENERAL LAWS 2350, as amended by Act of May 28, 1995, 74th Legislature, Regular Session, chapter 3189, 1995 TEXAS GENERAL LAWS 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 361, 1995 TEXAS GENERAL LAWS 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 TEXAS GENERAL LAWS (the "Act"). Section 1.08(a) grants the Authority all powers, rights and privileges necessary to manage, conserve, preserve and protect the aquifer; §1.11(a) requires the Authority to adopt rules to carry out its powers and duties under the Act; §1.14(a) requires the Authority to limit all authorizations and rights to withdraw water from the aquifer to, among other things: (1) protect the water quality of the aquifer and its springflows, (2) achieve water conservation, (3) protect aquatic and wildlife habitats, and (4) protect species that are listed as endangered or threatened; §1.14(f) enables the Authority to interrupt permitted withdrawals if aquifer levels drop below 650 feet at index well J-17 or below 845 feet at index well J-27, and requires the Authority to limit additional withdrawals to ensure springflows are not affected during critical drought conditions; §1.14(h) requires the Authority to implement and enforce water management practices to ensure that springflows of the Comal and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law through, inter alia, "phased reductions" in the amount of aquifer water that may be withdrawn; §1.15(a) directs the Authority to manage all withdrawals from the aquifer; §1.17(b) allows the Authority to determine interim authorization amounts; §1.17(c) clarifies that interim authorization use is subject to the Authority's rules; §1.26 directs the Authority to implement a plan for critical period management which distinguishes between discretionary and non-discretionary uses, requires reductions in discretionary uses, requires utility pricing to limit use by water utility customers, and requires reductions of nondiscretionary uses as necessary.

§719.1. Definitions.

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

(1) Applicant - An existing user who has filed with the Authority an application for an initial regular Permits/Enforcement Coordinator.

(2) Aquifer - The Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(3) Athletic field - A sports play field including playgrounds whose essential feature is a grass turf, other than a golf course.

(A) Conforming athletic field - An athletic field with an approved groundwater conservation plan under §719.150 of this chapter (relating to Athletic Fields);

(B) Non-conforming athletic field - Any other athletic field that is not a conforming athletic field.

(4) Authorized pumping amount - an applicant's interim authorization amount as set forth in Section 4B of a Declaration of Historical Use plus a transferred amount, if any, or the contracted amount which is applied against a monthly pumping schedule.

(5) Average historical groundwater withdrawal amount - The average annual amount of groundwater pumped during the years an applicant was in business from June 1, 1972 to May 31, 1993.

(6) c.f.s. - Cubic feet per second.

(7) Commercial landscape watering - landscape watering which is not agricultural or residential.

(8) Conjunctive user - An applicant is a conjunctive user if:

(A) the applicant uses water other than groundwater from the aquifer for at least 10% of the portion of the total amount of water used in the preceding 12 months;

(B) the non-aquifer water satisfies a demand that would otherwise be satisfied by the aquifer;

(C) the applicant, on a daily basis, uses all available non-aquifer water before using aquifer groundwater; and

(D) the non-aquifer water use considered with respect to determining the applicant's status as a conjunctive user was first used after 1986.

(9) Conservation Plan - a method and time schedule for the application of groundwater for commercial landscaping.

(10) Contract amount - An amount of groundwater from the aquifer than an applicant contracts with the Authority not to withdraw over an annual basis in excess of.

(11) Day - A 24-hour period beginning at midnight Central Daylight Time (CDT).

(12) Discretionary use - Any use of groundwater other than a nondiscretionary use.

(13) ft. m.s.l. - Feet above mean sea level.

(14) Golf course - An area of land used for the game of golf.

(A) Conforming Golf Course - A golf course with an approved groundwater conservation plan pursuant to §719.148 of this chapter (relating to Golf Courses).

(B) Non-conforming golf course - Any other golf course that is not a conforming golf course.

(15) Groundwater - Water within or withdrawn from the Edwards Aquifer.

(16) Index well - One of the following wells indicating aquifer water level conditions used to declare Emergency Drought Management Stages:

(A) for Bexar, Guadalupe, Comal, Hays, and Caldwell counties, well J-17;

(B) for Uvalde County, well J-27; and

(C) for Medina and Atascosa Counties, the Medina well in the Hondo Well Yard (well number TD 69-47-306).

(17) Interim Authorization - The period prior to the issuance of an initial regular permit when an applicant owning a well qualifying for interim authorization status may withdraw on an annual basis an amount that can not exceed the applicant's historical, maximum beneficial use as claimed on Section 4B of an application for the initial regular permit.

(18) Landscape watering - The application of groundwater from the aquifer for the discretionary use to grow or maintain plants such as flowers, ground covers, turf or grasses, shrubs, and trees, but does not include:

(A) Nondiscretionary use without waste of groundwater by a commercial nursery to the extent the water is used for production rather than decorative landscaping;

(B) Application of groundwater without waste to a non-commercial family garden or orchard, the produce of which is for household consumption only;

(C) Application of groundwater by means of hand-held bucket; hand-held hose; soaker hose or properly installed drip irrigation system; and

(D) Application of groundwater by means of a soaker hose, hand-held hose, or properly installed drip irrigation system immediately next to a concrete foundation solely for the purpose of preventing, to the extent the watering is necessary, substantial damage to the foundation or the structure caused by movement of the foundation.

(19) Maximum allowable withdrawals - The product of the groundwater withdrawal times the reduction percentage assigned to each reduction stage. The stages and reduction percentages are shown in the figure listed in §719.136(f) of this title (relating to Beginning and End of Emergency Drought Management Stages).

(20) Maximum transfer withdrawals - The product of the estimated monthly transfer amount times the reduction percentage assigned to each reduction stage.

(21) Monthly pumping schedule - The amount of water an applicant plans to pump each month of a calendar year. If an applicant fails to provide the Authority with a pumping schedule within thirty days of adoption of these rules, the Authority will determine a pumping schedule for the applicant.

(22) Municipal distribution system - a system for the distribution of potable water from the aquifer for municipal use by an applicant who is a person, privately owned utility, political subdivision, or other entity.

(23) Nondiscretionary use - A use of groundwater for:

(A) The protection of public health, safety, or welfare, including but not limited to use for drinking, food preparation, personal hygiene, public sanitation, control or prevention of disease, and fire fighting;

(B) An industrial, irrigation, or military use that directly supports gainful employment; or

(C) Domestic or livestock use.

(24) Transfer - The sale or lease of an applicant's interim authorization status to a third party.

(25) Transfer schedule - A document indicating the estimated monthly amount of groundwater to be withdrawn by each applicant that has been transferred.

(26) Water Conservation Rates - A method of encouraging efficient water use through quantity-based pricing structures by means of increasing the price of the water as more volume of water is used.

(27) Watering days and hours - A day and hours designated for landscape watering, limited as follows:

(A) Stage I is limited to the morning hours from midnight to 10:00 a.m. and the evening hours from 8:00 p.m. to midnight. Thus, if Friday is a designated watering day, the period of time referenced is Friday morning between 12:00 a.m. to 10:00 a.m., and Friday evening between 8:00 p.m. and midnight; and

(B) Stage II is limited to the morning hours of 3:00 a.m. to 8:00 a.m., and the evening hours of 8:00 p.m. to 10:00 p.m.

Filed with the Office of the Secretary of State, on May 4, 2000.

TRD-200003140
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: May 4, 2000
Expiration date: September 1, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

Subchapter B. EMERGENCY DROUGHT MANAGEMENT RULES

31 TAC §§719.120, 719.122, 719.124, 719.126, 719.128, 719.130, 719.132, 719.134, 719.136, 719.138, 719.140, 719.142, 719.144, 719.146, 719.148, 719.150, 719.152, 719.154, 719.156, 719.157, 719.158, 719.160, 719.162, 719.164

The new rules are adopted on an emergency basis by the Authority pursuant to §§1.08(a), 1.11(a), 1.14(a), (f) and (h), 1.15(a), 1.17(b) and (c), and 1.26 of the Act of May 30, 1993, 73rd Legislature Regular Session, chapter 626, 1993 TEXAS GENERAL LAWS 2350, as amended by Act of May 28, 1995, 74th Legislature, Regular Session, chapter 3189, 1995 TEXAS GENERAL LAWS 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 361, 1995 TEXAS GENERAL LAWS 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 TEXAS GENERAL LAWS (the "Act"). Section 1.08(a) grants the Authority all powers, rights and privileges necessary to manage, conserve, preserve and protect the aquifer; §1.11(a) requires the Authority to adopt rules to carry out its powers and duties under the Act; §1.14(a) requires the Authority to limit all authorizations and rights to withdraw water from the aquifer to, among other things: (1) protect the water quality of the aquifer and its springflows, (2) achieve water conservation, (3) protect aquatic and wildlife habitats, and (4) protect species that are listed as endangered or threatened; §1.14(f) enables the Authority to interrupt permitted withdrawals if aquifer levels drop below 650 feet at index well J-17 or below 845 feet at index well J-27, and requires the Authority to limit additional withdrawals to ensure springflows are not affected during critical drought conditions; §1.14(h) requires the Authority to implement and enforce water management practices to ensure that springflows of the Comal and San Marcos Springs are maintained to protect endangered and threatened species to

the extent required by federal law through, inter alia, "phased reductions" in the amount of aquifer water that may be withdrawn; §1.15(a) directs the Authority to manage all withdrawals from the aquifer; §1.17(b) allows the Authority to determine interim authorization amounts; §1.17(c) clarifies that interim authorization use is subject to the Authority's rules; §1.26 directs the Authority to implement a plan for critical period management which distinguishes between discretionary and non-discretionary uses, requires reductions in discretionary uses, requires utility pricing to limit use by water utility customers, and requires reductions of nondiscretionary uses as necessary.

§719.120. Policy/Mission Statement.

The purpose of this subchapter is to enable the authority to diminish the possibility of cessation of springflow, by working toward accomplishment of §1.14(h) of the Act.

§719.122. Applicability.

This chapter applies to

(1) applicants; and

(2) owners of exempt wells.

§719.124. Exempt Wells.

Owners of exempt wells are subject to the reduction measures in §719.142 (relating to Stage I Restrictions), §719.144 (relating to Stage II Restrictions), and §719.146 (relating to Stage III Emergency Springflow Protection Measures) of this title, irrespective of the reference to "applicant" in these sections.

§719.126. Nondiscretionary Uses.

Nondiscretionary uses will be reduced if necessary in order to help maintain adequate minimum spring discharges. These might be required under §719.146 of this subchapter (relating to Stage III Emergency Springflow Protection Measures) and, if required, will follow the priority as specified in §1.26(4) of the Act.

§719.128. Reduction Efforts for Discretionary Uses.

(a) An applicant shall avoid exceeding the maximum allowable withdrawal level at each Emergency Drought Management Stage by conserving groundwater, minimizing waste, reducing discretionary uses of groundwater to the maximum extent feasible, and taking any other necessary steps to reduce withdrawals of groundwater from the aquifer.

(b) A municipal distribution system, or appropriate governmental jurisdiction, shall adopt and enforce an Emergency Drought Management Ordinance, a Critical Period Management Ordinance, or other appropriate legal instrument that meets or exceeds §719.136(d) of this chapter (relating to Beginning and End of Emergency Drought Management Stages).

(c) All proposed or current ordinances (or appropriate legal instruments) will be submitted to the general manager for review and approval as a qualifying instrument to ensure compliance with this chapter.

(d) If a municipal distribution system, or appropriate governmental jurisdiction, does not have the authority to enforce this subchapter(s), then the Authority will be responsible for enforcement.

(e) During all times, in which a qualifying ordinance is not in effect, the provisions of this subchapter shall apply.

(f) The Emergency Drought Management Ordinance, or Critical Period Management Ordinance must be certified by the general manager as a qualifying instrument to ensure compliance with this chapter. The ordinance shall be certified within 30 days of receipt by the Authority, unless the general manager requests additional information from the applicant , or if the general manager fails to respond within 30 days. All municipal distribution systems, or appropriate governmental jurisdictions, shall file with the Authority any updated water service pricing orders or ordinances adopting rates, charges, and other Emergency Drought programs by their effective date. If the general manager does not certify the Emergency Drought Management Ordinance (or other appropriate legal instrument) then the municipal distribution system, or appropriate governmental jurisdiction, has the right to appeal the decision to the Board of Directors of the Authority on a form prescribed by the Authority.

§719.130. Emergency Drought Management Stages - East Area.

The Emergency Drought Management Stages listed in paragraphs (1)-(3) of this section apply within the boundaries of the Authority in the counties of Bexar, Comal, Hays, Caldwell, and Guadalupe. When the J-17 well reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the J-17 well level is at or below 650 ft. m.s.l. and above 640 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the J-17 well level is at or below 640 ft. m.s.l. and above 630 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when the J-17 well level is at or below 630 ft. m.s.l.

§719.132. Emergency Drought Management Stages - Medina/Atascosa Area.

The Emergency Drought Management Stages listed in paragraphs (1) - (3) of this section apply within the boundaries of the Authority in the counties of Medina and Atascosa, when the Medina well level reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the TD 69-47-306 Medina well level is at or below 670 ft. m.s.l. and above 660 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the TD 69-47-306 Medina well level is at or below 660 ft. m.s.l. and above 655 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when TD 69-47-306 Medina well level is at or below 655 ft. m.s.l.

§719.134. Emergency Drought Management Stages-Uvalde Area.

The Emergency Drought Management Stages listed in paragraphs (1) - (3) of this section apply within the boundaries of the Authority in the County of Uvalde, when the J-27 level reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the J-27 well level is at or below 845 ft. m.s.l. and above 840 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the J-27 well level is at or below 840 ft. m.s.l. and above 835 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when the J-27 level is at or below 835 ft. m.s.l.

§719.136. Beginning and End of Emergency Drought Management Stages.

(a) The general manager will post on the Internet and at the official office of the authority, by 10:00 a.m. every business day, the most recently available index well levels and the applicable Emergency Drought Management Stage as established by §§719.130, 719.132, and 719.134 of this title (relating to Emergency Drought Management Stages - East Area; Emergency Drought Management Stages - Medina Area; Emergency Drought Management Stages - Uvalde Area, respectively).

(b) If the groundwater elevation for the relevant index well is not available on a particular day, the stage in effect in the applicable area will continue to the next day.

(c) An Emergency Drought Management Stage will remain in effect for at least thirty days unless a more restrictive stage is implemented. A stage may be rescinded before the thirty days expire if the general manager determines aquifer groundwater levels are sufficient to end the stage.

(d) The maximum allowable withdrawals for each stage are as follows:

(1) Stage I Restrictions: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 95% of the authorized pumping amount for that corresponding month.

(2) Stage II Restrictions: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 90% of the authorized pumping amount for that corresponding month.

(3) Stage III Emergency Springflow Protection Measures: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 85% of the authorized pumping amount for that corresponding month.

(e) Transfer Withdrawals - Withdrawals of transferred amounts are based on the estimated monthly withdrawals indicated on the transfer schedule and for each stage is as follows: Stage I - 95% of monthly withdrawals; Stage II - 90% of monthly withdrawals; Stage III Emergency Springflow Protection Measures - 85% of monthly withdrawals. The monthly transfer schedule is the total amount of transfer water that can be withdrawn monthly. The monthly transfer schedule is determined by the following: Monthly transfer schedule = Total Annual Transfer Amount * (monthly pumping schedule for the corresponding month / interim authorization amount or contract amount.).

(f) The well levels that trigger stages as described in this section and the applicable maximum withdrawal amounts are stated in the following table, which is incorporated herein. Stages are triggered independently in each of the three areas.
Figure: 31 TAC §719.136(f)

§719.138. Enforcement.

(a) All measurements in this section are for one calendar month intervals.

(b) Subject to §719.126 of this title (relating to Nondiscretionary Uses), applicants are prohibited from withdrawing more than the applicable monthly pumping schedules during each Emergency Drought Management Stage.

(c) An applicant that violates these rules is subject to enforcement as provided for in the Act.

§719.140. Determination of Monthly Pumping Schedule.

(a) The general manager will initially determine the monthly pumping schedule for each applicant, except an irrigation user. The general manager will notify applicants of the determinations in writing.

(b) The general manager, with the approval of the board, may calculate the monthly pumping schedule and monthly transfer schedule on different criteria than is otherwise required by these rules in particular cases, to better approximate the minimum amount of groundwater the applicant needs for nondiscretionary uses, or to avoid penalizing the applicant for development of alternative water supplies.

(c) Notwithstanding subsection (a) of this section, applicants have the duty to self-determine their monthly pumping schedule and monthly transfer schedule within 30 days of the implementation of these rules regardless of whether the general manager has determined such amounts or notified an applicant of such determinations.

§719.142. Stage I Restrictions.

When Stage I is in effect, the following restrictions apply to applicants, or their customers as applicable throughout the applicable area of the Authority:

(1) An applicant shall file monthly withdrawal reports.

(2) No applicant may withdraw from the aquifer more than 95% of the authorized pumping amount for that corresponding month.

(3) Municipalities must designate a specific day or days of the calendar week when customers within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section. For all customers of applicants using groundwater for landscape watering of property located within a municipality, the watering days are those days designated in that system's Emergency Drought Management Ordinance or Critical Period Management Ordinance. Municipal distribution systems, or appropriate governmental jurisdictions, are encouraged to stagger those days to reduce peaks of demand.

(4) For all applicants and owners of exempt wells whose property is not in a municipality, the watering day, in accordance with the last digit of the property address is as follows:
Figure: 31 TAC §719.142(4)

(5) No applicant or owner of an exempt well may use groundwater for an ornamental outdoor fountain or similar feature.

(6) Applicants and owners of exempt Edwards Aquifer water wells inside the appropriate jurisdiction of a municipal corporation must comply with that entity's Emergency Drought Management Ordinance.

§719.144. Stage II Restrictions.

When Stage II is in effect, the following restrictions apply to all applicants, or their customers as applicable, and owners of exempt wells throughout the applicable area of the Authority:

(1) An applicant shall file monthly withdrawal reports.

(2) Section 719.142 of this title (relating to Stage I Restrictions) apply in Stage II.

(3) No applicant may withdraw from the aquifer more than 90% of the authorized pumping amount for that corresponding month. Municipalities must designate a specific day or days of the calendar week when customers within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section.

(4) Landscape watering hours are reduced to the morning hours of 3:00 a.m. to 8:00 a.m. and the evening hours of 8:00 p.m. to 10:00 p.m. However, landscape watering by means of a hand-

held hose, a hand-held bucket, a soaker hose, or a properly installed drip irrigation system is permitted on the authorized day of the week during the designated hours listed in this paragraph. Persons utilizing irrigation systems requiring more than seven hours to complete one weekly watering cycle may request a variance in accordance with §719.158 of this title (relating to Variance Applications). Such a request must be accompanied by an emergency plan.

(5) Filling of all new and existing swimming pools is prohibited, unless at least 30% of the water is obtained from a source other than the aquifer. Groundwater may be used to replenish swimming pools to maintenance level. Draining of swimming pools is permitted only onto a pervious surface or onto a pool deck where the water is transmitted directly to a pervious surface, only if necessary, to:

(A) remove excess water from the pool due to rain to lower the water to the maintenance level;

(B) repair, maintain, or replace a pool component that has become hazardous; or

(C) repair a pool leak.

§719.146. Stage III Emergency Springflow Protection Measures.

When Stage III is in effect, the following restrictions apply to all applicants and owners of exempt wells throughout the applicable area of the Authority:

(1) Any other provision of this chapter notwithstanding, groundwater from the aquifer may be used when and to the extent it is necessary to prevent danger to public health, safety, or welfare.

(2) The provisions of §719.142 of this chapter (relating to Stage I Restrictions);

(3) The provisions of §719.144 of this chapter (relating to Stage II Restrictions);

(4) An applicant may not withdraw from the aquifer more than 85% of the authorized pumping amount for the corresponding month.

(5) An applicant shall submit weekly reports of groundwater withdrawals as required by §719.157 of this chapter (relating to Weekly Withdrawal Reports).

(A) Weekly groundwater reports are to be submitted to the authority by 8:00 a.m. on Tuesday following the reporting week.

(B) Weekly groundwater reports will monitor progress towards monthly pumping goals; however, compliance and enforcement will be based on monthly reports.

(C) The reporting period for Weekly groundwater reports is from Sunday to Saturday.

(6) Irrigation is limited to two acre-feet per acre irrigated during the calendar year. Irrigation can continue on the acreage irrigated during that calendar year if the crop is planted prior to implementation of Stage III Emergency Springflow Protection Measures. Irrigation of a new crop is prohibited during or while Stage III Emergency Springflow Protection Measures are in effect. This limitation is subject to variances that may be issued by the general manager based on rainfall.

(7) Landscape watering by means of a hand-held hose, a hand-held bucket, a soaker hose, properly installed drip irrigation system is permitted during the same days and hours authorized in Stage II.

(8) The Authority may seek further reductions of groundwater withdrawals for Stage III and may require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preference:

(A) municipal, domestic, and livestock

(B) industrial and crop irrigation;

(C) residential landscape irrigation;

(D) recreational and pleasure; and

(E) other uses that are authorized by law.

§719.148. Golf Courses.

Notwithstanding any other language in this Emergency Drought Management Plan, the owners of golf courses that are applicants or customers of an applicant shall be required to submit a groundwater conservation plan and shall be defined as "conforming" and "non-conforming" and shall reduce usage of aquifer groundwater under the following terms:

(1) A conforming golf course is one that achieves enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), or similar system, which may be comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather station, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the golf course, must accomplish the following restrictions listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I - 10% reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil holding capacity; or use of not more than 95% of the Authorized Pumping Amount for that corresponding month,

(B) Stage II – 15% reduction in the replacement of ET rate or daily soil holding capacity; or use of not more than 90% of the Authorized Pumping Amount for that corresponding month,

(C) Stage III Emergency Springflow Protection Measures – 20% reduction in the replacement of daily ET rate or daily soil holding capacity, or use of not more than 85% of the Authorized Pumping Amount for that corresponding month.

(2) A non-conforming golf course shall comply with the following reduction measures listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I – 15% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 95% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS;

(B) Stage II - 20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS;

(C) Stage III Emergency Springflow Protection Measures- 30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 85% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS.

(3) The owner or operator of a golf course must comply with all Stage III Emergency Springflow Protection Measures rules issued by the board under §719.146 of this chapter (relating to Stage III Emergency Springflow Protection Measures) of this title.

(4) The owner or operator of a golf course must maintain daily water use records available for inspection upon request.

(5) The owner or operator of a conforming golf course or a golf course with a CCIS must maintain daily water use records of their evapotransporation ("ET rate") or daily soil holding capacity, which must be available for inspection upon request.

(6) All daily records must be kept on site.

§719.150. Athletic Fields.

Notwithstanding any other language in this Emergency Drought Management Plan, the owners of an athletic field that is an applicant, or a customer of an applicant, shall only be required to submit a groundwater conservation plan and shall be defined as "conforming" and "non-conforming" and shall reduce usage of aquifer groundwater under the following terms:

(1) A conforming athletic field is one that achieves enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), or similar system, which may be comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather station, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the athletic field. must require the user to accomplish the following restrictions listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I – 10% reduction in the replacement of ET rate or daily soil holding capacity; or use of not more than 95% of the Authorized Pumping Amount for that corresponding month for athletic fields,

(B) Stage II – 15% reduction in the replacement of daily ET rate or daily soil holding capacity; or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for athletic fields,

(C) Stage III Emergency Springflow Protection Measures – 20% reduction in the replacement of daily ET rate or daily soil holding capacity, or use of not more 85% of the Authorized Pumping Amount for that corresponding month for athletic fields

(2) A non-conforming athletic field shall comply with the following reduction measures listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I - 10% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more 95% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS;

(B) Stage II - 20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS;

(C) Stage III Emergency Springflow Protection Measures - 30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 85% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS.

(3) The owner or operator of an athletic field must comply with all Stage III Emergency Springflow Protection Measures rules issued by the board under §719.146 (relating to Stage III Emergency Springflow Protection Measures) of this title.

(4) The owner or operator of an athletic field must maintain daily water use records available for inspection upon request.

(5) The owner or operator of an athletic field with a CCIS must maintain daily water use records of their evapotransporation ("ET rate") or daily soil holding capacity, which must be available for inspection upon request.

(6) All daily records must be kept on site.

§719.152. Commercial Landscape Watering.

Commercial landscape watering users that are applicants or customers of applicants that are outside an appropriate jurisdiction of a municipality and cannot specifically comply with §§719.142(3), 719.144(4), or 719.146(9) of this chapter (relating to Stage I Restrictions, State II Restrictions, and Stage III Emergency Springflow Protection measures respectively) may submit a Conservation Plan that achieves the withdrawal restrictions of the Authority. For customers of municipal distribution systems, or appropriate governmental jurisdictions, the general manager may refer to ordinances within the entities jurisdiction to determine consistency of the plan during his review.

§719.154. Groundwater Withdrawal Reports.

(a) Every applicant other than an irrigation user, must file a groundwater withdrawal report with the Authority that contains the following information;

(1) the applicant's name, address, and telephone number;

(2) contact person and title;

(3) the location and name or number of all wells from which groundwater is withdrawn (attach map);

(4) the total amount of groundwater withdrawn each month during the 12 months prior to the date of the report;

(5) the estimated amount of groundwater actually beneficially applied without waste to nondiscretionary uses, and the nature of such uses;

(6) a summary of the applicant past efforts to conserve water and reduce the amount of water required, and the efficacy of such efforts;

(7) a summary of any actions the applicant intends to take to conserve water and reduce the amount of water required in order to comply with these rules; and

(8) any other information requested by the general manager.

(b) An applicant must file its groundwater withdrawal report with the Authority within 30 days after the effective date of these rules.

(c) A person who, based on a transfer, becomes an applicant after the effective date of these rules must file a groundwater withdrawal report within seven days of the first day the person becomes an applicant.

(d) An applicant who, without good cause, fails to timely file a completed groundwater withdrawal report, is not entitled to exclude groundwater water under §719.126 of this title (relating to Nondiscretionary Uses) from mandatory restrictions until a groundwater withdrawal report is filed with the Authority.

(e) The groundwater withdrawal report shall be filed on a form prescribed by the Authority.

(f) The groundwater withdrawal report may be filed by e-mail, regular mail, or hand delivery. The subject line of the e-mail shall include: "GWR", an application number and applicant's name.

§719.156. Monthly Withdrawal Reports.

(a) Each applicant must file monthly withdrawal reports with the Authority for any month during which a stage is in effect for the particular area where the applicant is located. These reports must contain the following information:

(1) the applicant's name, address, and telephone number;

(2) contact person and title;

(3) the reporting month;

(4) total amount of groundwater withdrawn during the reporting month;

(5) the estimated amount of groundwater applied to nondiscretionary use during the reporting month, and the nature of such use; and

(6) any other information requested by the general manager.

(b) Monthly withdrawal reports must be filed with the Authority no later than the fifth business day of the month following the reporting month.

(c) An applicant who fails to timely file a monthly withdrawal report in accordance with this section is not entitled to exclude groundwater under §719.126 of this title (relating to Nondiscretionary Uses) from mandatory restrictions for the reporting month.

(d) The general manager may in special cases arrange for different reporting requirements under this section, including less frequent reporting.

(e) The monthly withdrawal report shall be filed on a form prescribed by the Authority.

(f) The monthly withdrawal report may be filed by e-mail, regular mail, or hand delivery. The subject line of the e-mail shall include: "MWR", the permit application number and applicant's name.

§719.157. Weekly Withdrawal Reports.

(a) Each applicant must file weekly withdrawal reports with the Authority for any week during which Stage III Emergency Springflow Protection Measures is effect for the particular area where the applicant is located. These reports must contain the following information:

(1) the applicant's name, address, and telephone number;

(2) contact person and title;

(3) the reporting week;

(4) total amount of groundwater withdrawn during the reporting week;

(5) any other information requested by the general manager.

(b) Weekly withdrawal reports must be filed with the Authority no later than 8:00 a.m. on Tuesday of the week following the reporting week.

(c) The general manager may in special cases arrange for different reporting requirements under this section, including less frequent reporting.

(d) The weekly withdrawal report shall be filed on a form prescribed by the Authority.

(e) The weekly withdrawal report may be filed by e-mail as an option to filing by regular mail or hand delivery. The subject line of the e-mail shall include: "WWR", the permit application number and applicant's name.

(f) A reporting week is from Sunday through Saturday.

§719.158. Variance Applications.

An applicant may file with the Authority an application for a variance.

§719.160. Basis for Granting and Affirming Variances; Action of the General Manager.

The general manager shall provisionally grant an application for a variance from the Emergency Drought Management Plan until the board considers the variance application if all of the following elements are established by convincing evidence:

(1) the applicant paid the application fee;

(2) the variance is necessary to avoid an unusual, direct, and substantial hardship;

(3) there are no other reasonably available means for avoiding the hardship or elimination without a variance;

(4) the application is in compliance with the Act;

(5) the application is in compliance with the rules of the Authority; and

(6) granting the variance will not cause significant harm to any other person or group of persons.

§719.162. Board Action on Variance Application.

(a) The board may affirm a provisional variance for a specific term and with any conditions the board deems appropriate.

(b) The board may require an applicant granted a variance to file reports with the Authority containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with the terms and conditions of the variance.

(c) If the board does not affirm the general manager's action or variance, then the provision becomes null and void.

§719.164. Rescission of Variance.

The board may rescind a variance at any time due to changed circumstances, new information, or failure of an applicant to abide by the terms and conditions of the variance, the Act, the rules of the Authority, or any order of the board.

Filed with the Office of the Secretary of State, on May 4, 2000.

TRD-200003141
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: May 4, 2000
Expiration date: September 1, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part 3. OFFICE OF THE ATTORNEY GENERAL

Chapter 55. CHILD SUPPORT ENFORCEMENT

Subchapter A. GENERAL GUIDELINES

1 TAC §§55.1, 55.2, 55.3, 55.4, 55.5

The Office of the Attorney General, Child Support Division, proposes the repeal of §§55.1-55.5, and proposes new §§55.1-55.5 concerning non-cooperation of recipient of public assistance. The proposed repeals are necessary due to the changes in federal statutes concerning child support. The new sections will replace the current sections.

Section 55.1. Agency and Agency Attorneys in Child Support Cases replaces Cooperation Required for Recipients of Child Support Services.

Section 55.2. Title IV-D Agency May Appear as a Party at Any Stage of Litigation replaces Failure to Cooperate.

Section 55.3. Cooperation Required for Recipients of Child Support Services replaces Good Cause for Refusing to Cooperate.

Section 55.4. Determination of Cooperation replaces Agency and Agency Attorneys in Child Support Cases.

Section 55.5. Good Cause for Failure To Cooperate replaces Title IV-D Agency May Appear as a Party at Any Stage of Litigation.

Howard G. Baldwin, Jr., Deputy Attorney General for Child Support, has determined that for the first five years these sections as proposed are in effect, there will be no fiscal implications for state or local government as a result of any replacement in these sections.

Mr. Baldwin has also determined that each year of the first five years the sections are in effect, the public benefit anticipated as a result of replacing or deleting these sections is a more standardized and efficient cooperation process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Comments may be submitted to Kathy Shafer, Child Support Division, General Counsel Section, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741, or (mailing address) P.O. Box 12017, mail code 039, Austin, Texas, 78722-2017.

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

The repeals are proposed under the Texas Family Code, Chapter 231 , pursuant to the September 1, 1997 statutory changes.

The Texas Family Code is affected by 42 USC 654(29) and 454(29) of the Social Security Act.

§55.1. Cooperation Required for Recipients of Child Support Services.

§55.2. Failure to Cooperate.

§55.3. Good Cause for Refusing to Cooperate.

§55.4. Agency and Agency Attorneys in Child Support Cases.

§55.5. Title IV-D Agency May Appear as a Party at Any Stage of Litigation.

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 May 8, 2000.

TRD-200003226

Elizabeth Robinson

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: June 18, 2000

For further information, please call: A.G. Younger at (512) 463-2110

♦ ♦ ♦

The new sections are proposed under the Texas Family Code, Chapter 231, pursuant to the September 1, 1999, statutory changes.

The Texas Family Code is affected by 42 USC(29) and 454(29) of the Social Security Act.

§55.1. Agency and Agency Attorneys in Child Support Cases.

(a) The Office of the Attorney General is designated by Texas law as the state's Title IV-D Agency to perform the functions and provide the services required by the Social Security Act, title IV, part D; 42 United States Code§§651, et seq.; and 45 Code of Federal Regulations, Parts 300-399 (hereafter IV-D services); as these federal statutes and regulations now exist or may in the future be amended. In providing services required by federal and state law, the Title IV-D Agency may:

(1) determine which services and remedies are appropriate in each case;

(2) employ attorneys to represent the interests of the State of Texas in providing such services;

(3) contract with private attorneys to provide services in IV-D cases; and

(4) appear as a party in any legal proceeding in any trial or appellate court.

(b) The Title IV-D Agency shall inform all recipients of IV-D services that attorneys providing services under this chapter represent the State of Texas, but do not represent any individual.

§55.2. Title IV-D Agency May Appear as a Party at Any Stage of Litigation.

The Title IV-D Agency, in providing services pursuant to state and federal law, may appear as a party at any stage in any legal proceeding, whether or not the agency was a party at trial.

§55.3. Cooperation Required for Recipients of Child Support Services.

(a) Cooperation by Temporary Assistance for Needy Families (TANF) Program Recipients. All TANF recipients are required to cooperate with the Title IV-D Agency in performing the required IV-D functions set out in Texas Family Code, Chapter 231, and other applicable provisions of law, unless there exists good cause as specified under §55.5 of this subchapter (relating to Good Cause for Failure to Cooperate).

(1) Recipients must cooperate in:

(A) identifying and locating obligors and potential obligors;

(B) establishing paternity of a child born out of wedlock, including participating in genetic testing;

(C) establishing, enforcing, or modifying child support obligations;

(D) establishing, enforcing, or modifying medical support obligations;

(E) obtaining support payments for the recipient or a child for whom the recipient is receiving services;

(F) obtaining medical support payments for which an obligor is responsible;

(G) obtaining any other payments or property due the recipient or a child for whom the recipient is receiving services;

(H) providing information on any third party who may be liable for medical care and services, including, but not limited to:

(i) the name of the health insurance policy holder;

(ii) the policy holder's relationship to the recipient and child;

(iii) the social security number of the policy holder;

(iv) and the name and address of the insurance company and policy number.

(2) To accomplish the above, a recipient must:

(A) keep appointments made with the Title IV-D Agency;

(B) provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;

(C) appear as a witness at judicial or administrative hearings or proceedings;

(D) provide information, or attest to the lack of information, under penalty of perjury;

(E) pay to the Title IV-D Agency any support payments sent to the recipient in error;

(F) pay to the Title IV-D Agency any support payments received from the obligor after an assignment under 42 USC §608(a)(3) has been made, including current and past due support payments and any amounts due to the Title IV-D Agency for recovery of retained direct support payments; and

(G) perform any other action required of a recipient by state law or federal regulations applicable to Title IV-D.

(b) Cooperation by Medical Assistance-Only Recipients. All persons referred to the Title IV-D Agency who are receiving Medical Assistance-Only benefits pursuant to an assignment of medical support rights under 42 CFR §433.146, are entitled to receive all IV-D services.

(1) Such persons are required to cooperate with the Title IV-D Agency in:

(A) identifying and locating obligors or potential obligors;

(B) establishing paternity of a child born out of wedlock, including participating in genetic testing;

(C) establishing, enforcing, or modifying medical support obligations;

(D) obtaining medical support payments for which an obligor is responsible;

(E) providing information on any third party who may be liable for medical care and services, including, but not limited to:

(i) the name of the health insurance policy holder;

(ii) the policy holder's relationship to the recipient and child;

(iii) the social security number of the policy holder;

(iv) and the name and address of the insurance company and policy number.

(2) To accomplish the above, a recipient must:

(A) keep appointments made with the Title IV-D Agency;

(B) provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;

(C) appear as a witness at judicial or administrative hearings or proceedings;

(D) provide information, or attest to the lack of information, under penalty of perjury;

(E) pay to the Title IV-D Agency any support payments sent to the recipient in error;

(F) perform any other required IV-D function.

(c) Cooperation by Former TANF and Former Medical Assistance-Only Recipients. All former TANF recipients and former Medical Assistance-Only recipients must continue to cooperate with the Title IV-D Agency as long as there remain assigned child support and/or assigned medical support arrears recoverable by the state.

(d) Cooperation by Applicants for IV-D Services. All persons who complete an application for IV-D services (where there is no prior assignment of support rights to the state) must accept all appropriate services provided by the agency.

(1) Applicants must cooperate with the agency in:

(A) identifying and locating obligors and potential obligors;

(B) establishing paternity of a child born out of wedlock, including participating in genetic testing;

(C) establishing, enforcing, or modifying child support obligations;

(D) establishing, enforcing, or modifying medical support obligations;

(E) obtaining child support payments;

(F) obtaining medical support payments;

(G) obtaining any other payments or property due the recipient or a child for whom the applicant is receiving services.

(2) To accomplish the above, an applicant must:

(A) keep appointments made with the Title IV-D Agency;

(B) provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;

(C) appear as a witness at judicial or administrative hearings or proceedings;

(D) provide information, or attest to the lack of information, under penalty of perjury;

(E) pay to the Title IV-D Agency any support payments sent to the applicant in error;

(F) perform any other required IV-D function.

§55.4. Determination of Cooperation.

The Title IV-D Agency shall make the determination as to whether an individual is cooperating as required by §55.3 of this subchapter relating to Cooperation Required for Recipients of Child Support Services.

(1) If a recipient of public assistance fails to cooperate:

(A) The Title IV-D Agency must report the determination of non-cooperation to the Department of Human Services.

(B) The Department of Human Services must immediately notify the recipient and impose sanctions pursuant to Human Resources Code, §31.0032, by reducing the recipient's next grant award.

(C) The recipient may request a hearing to show good cause for not cooperating not later than the 13th day after receipt of the notice of non-cooperation issued by the Department of Human Services, in which case, the procedures in §55.5 of this subchapter (relating to Good Cause for Failure to Cooperate) apply.

(D) The sanction for failure to cooperate shall remain until the recipient complies with the specific IV-D requirement that caused the sanction. When the Title IV-D Agency determines the recipient is cooperating:

(i) the Title IV-D Agency shall immediately notify the Department of Human Services the recipient is cooperating and

(ii) the Department of Human Services shall lift the sanction.

(2) If a person who is not a recipient of public assistance fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate will result in termination of IV-D services.

§55.5. Good Cause for Failure To Cooperate.

When a TANF or Medical Assistance-Only recipient claims good cause for not cooperating with IV-D requirements, the Department of Human Services determines if the recipient has good cause pursuant to Human Resources Code §§31.0032 and 31.0033.

(1) If the Title IV-D Agency receives final notification that the Department of Human Services determined good cause exists for failure to cooperate with IV-D requirements, the Title IV-D Agency shall cease all IV-D services and terminate the recipient's child support case.

(2) If the Title IV-D Agency receives notice that the Department of Human Services determined good cause does not exist, the Title IV-D Agency shall continue to provide appropriate IV-D 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 May 8, 2000.

TRD-200003227
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: June 18, 2000
For further information, please call: A.G. Younger at (512) 463-2110

♦ ♦ ♦

Part 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 251. REGIONAL PLANS–STANDARDS

1 TAC §251.9

The Commission on State Emergency Communications (CSEC) proposes amendment to §251.9, concerning the use and distribution of 9-1-1 funds and other related funds for address maintenance, which provide for the efficient maintenance of maps and records associated with an addressing system for the efficient operation of an E9-1-1 system and the delivery of a caller's location.

The amendment reviews the current policy and practice with regard to the allowance of travel and utility expenses for address maintenance. Current policy does not approve funding for county personnel to travel outside the region for training or conferences; therefore, CSEC is proposing to amend the rule to expressly indicate that such travel is disallowed. In evaluating the appropriate funding level for utilities, staff works with the regional planning commission or the county to determine the appropriate funding level based on total approved personnel. Consequently, the rule is being amended to specify that determination.

James D. Goerke, Executive Director, has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Goerke has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be clarification on what funding approvals are allowable under address maintenance. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed amendments may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to James D. Goerke, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas, 78701-3942.

The amendments are proposed under Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.057; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provides the Commission on State Emergency Communications with the authority to develop, amend and fund components of a regional plan that meets standards set for the operation of prompt and efficient 9-1-1 service throughout a region.

No other statutes, articles or codes are affected by the proposed amendment.

§251.9. Guidelines for Addressing Maintenance Funds.

The [~~Advisory~~] Commission on State Emergency Communications (Commission) has adopted a policy regarding rural addressing maintenance and the use of state funds. These guidelines address the use and distribution of 9-1-1 Funds and other related funds. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification (ALI) feature, which displays the locations of 9-1-1 callers.

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

(4) Budget Components. A regional planning council or an emergency communication district must submit an addressing maintenance budget to the Commission for approval. Addressing maintenance budgets may include the following cost components listed in subparagraphs (A)-(K) of this paragraph:

(A) (No change.)

(B) Travel–Total local travel estimated for the budget period multiplied by the current reimbursement rate for use of personally owned vehicles as defined by the State of Texas. List the cost rate for county owned vehicles. Out-of-region travel for training and conferences for county personnel is not allowable.

(C)-(G) (No change.)

(H) Utilities–Total costs for utilities such as electricity, gas, water, etc., expected during the budget period. CSEC staff, with the Council of Governments and/or County, evaluates the appropriate funding level for utilities based on total approved personnel.

(I)-(K) (No change.)

(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 May 8, 2000.

TRD-200003207
James D. Goerke
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-6933

♦ ♦ ♦

TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 17. MARKETING AND PROMOTION DIVISION

Subchapter C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS, AND GO TEXAN AND DESIGN MARKS

4 TAC §17.51

The Texas Department of Agriculture proposes an amendment to §17.51, concerning use of the GO TEXAN and Design Mark.

The amendment is proposed in order to clarify that fresh meat products are allowed to use the GO TEXAN and Design mark as part of the GO TEXAN promotional marketing program. The proposed amendment to §17.51 deletes the phrase "excluding fresh meats" from the definition of food and provides that 100% fresh beef and processed 100% beef products must comply with the requirements of the GO TEXAN Beef Program as set forth in §17.58.

Ulrike Lapham, funding coordinator for marketing and promotion, has determined that for the five-year period the amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or ad-

ministering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of enforcing or implementing the section as amended.

Ms. Lapham has also 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 clarification of the eligibility requirements for fresh meat products participating in the GO TEXAN promotional marketing program. There is no economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Ulrike Lapham, Funding Coordinator for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the authority of §12.016 of the Texas Agriculture Code, which provides that the department shall adopt rules to administer the Texas Agriculture Code.

The proposed amendment affects the Texas Agriculture Code, Chapters 12 and 46.

§17.51. Definitions.

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

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

(4) Food - Agricultural products [~~, excluding fresh meats,~~] produced or processed in Texas for human consumption. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of §17.58 of this title (relating to GO TEXAN Beef Program).

(5) - (21) (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 May 8, 2000.

TRD-200003215
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 463-4075

♦ ♦ ♦

Subchapter F. MISCELLANEOUS PROVISIONS

4 TAC §17.200

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

The Texas Department of Agriculture (the Department) proposes the repeal of §17.200, concerning an expiration date for Chapter 17, relating to Marketing and Promotion Division.

The repeal of §17.200 is proposed because the establishment of an expiration date for Chapter 17 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §17.200 eliminates the expiration date for Chapter 17.

Dolores Alvarado Hibbs, deputy general counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hibbs also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro-businesses or small businesses and to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P. O. Box 12847, and Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the Department with the authority to adopt rules to administer the Texas Agriculture Code.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.200. Expiration Provision.

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 May 8, 2000.

TRD-200003216
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 463-4075

♦ ♦ ♦

Subchapter G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.304, 17.306, 17.308

The Texas Department of Agriculture proposes amendments to §§17.304, 17.306, and 17.308, concerning the GO TEXAN Partner Program.

The amendments are proposed in order to clarify the requirements for matching funds and in-kind contributions. The proposed amendments to §17.304 and §17.306 provide that the matching funds shall be those as specified in the grant contract, rather than as proposed in the project request. The proposed amendments to §17.306 also provide that in-kind matching contributions may be contributed by the grantee or a third party and that travel expenses approved by the board are deemed to be in-kind contributions, and set out the procedures for documenting in-kind contributions. In addition to the referenced proposed changes in language, §17.306 has also been reformatted for purposes of clarity and new subsection (g) designated, relating to in-kind contributions. The proposed amendments to §17.308(f) and (g) provide that the grant funds are those specified in the contract, not the project request, and the proposed

amendment to §17.308(g) clarifies that returned funds are refunded as opposed to reimbursed.

Ulrike Lapham, funding coordinator for marketing and promotion, has determined that for the five-year period the amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing these sections.

Ms. Lapham has also determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the application procedures for the GO TEXAN Partner Program, and clarification of the procedures and requirements regarding in-kind contributions and refunds of unused grant funds. There is no economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Ulrike Lapham, Funding Coordinator for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*

The amendments are proposed under the authority of §46.012 of the Texas Agriculture Code, which provides that the department shall adopt rules to administer Chapter 46 of the Code.

The proposed amendments affect the Texas Agriculture Code, Chapter 46.

§17.304. Requirements for Participation.

To be eligible for participation in the program through the use of matching funds under this subchapter, an applicant must:

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

(5) submit to the department, within ten business days after receiving a request for funds from the department, cash matching funds as specified in the grant performance contract [~~project request~~] and in accordance with this subchapter.

§17.306. Filing Requirements and Consideration of Project Requests.

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

(f) Deposit of matching funds. Matching funds for board approved and contracted projects [~~project requests~~] shall be deposited with the department within ten business days after receiving a request for funds from the department. For purposes of this subchapter, "matching" means a dollar-per-dollar amount.

(g) In-kind contributions.

(1) The Department may accept in-kind contributions with a documented, clear monetary value from program applicants to satisfy the matching funds requirement. In-kind contributions may be contributed by the applicant or a third party.

(2) For purposes of this subchapter, the board shall have sole discretion to approve the use of in-kind contributions, in an amount not to exceed 10% of the total approved and contracted project [~~request~~] amount, to satisfy the matching funds requirement. Travel expenses approved by the board are deemed to have board approval for treatment solely as in-kind contributions unless specifically stated otherwise.

(3) The successful applicant, or grantee, must provide satisfactory documentation to the department of the actual expenditure or utilization of any approved in-kind contributions by the grantee prior to the release or expenditure by the department of the corresponding GO TEXAN Program matching grant funds. The documentation provided by the grantee must establish the clear monetary value of the in-kind contribution.

(4) Should the grantee fail to provide satisfactory documentation of the in-kind contribution, or should the actual monetary value of the in-kind contribution as established by the documentation fail to equal the projected or anticipated value, the corresponding GO TEXAN Program matching grant funds will be forfeited by the grantee and will revert back to the general GO TEXAN Partner Program Account.

(5) In the event the actual value of the in-kind contribution exceeds the projected or anticipated value, the GO TEXAN Program matching grant funds shall not be increased, but the excess shall be deemed outside the GO TEXAN program and shall be the sole responsibility of the grantee.

§17.308. Use of Funds.

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

(f) 85% of all funds for each approved and contracted project [~~request~~] shall be expended to promote the specific product(s) of applicants and 15% of all funds for each approved and contracted project [~~request~~] shall be expended on the department's GO TEXAN Program. If feasible and practical, the 15% portion of funds for each individual project request will be expended in a manner that directly or indirectly promotes the specific product(s) of applicant.

(g) Upon the completion or cancellation of a project, the department will [~~reimburse a~~] refund to the successful applicant [~~for~~] the applicant's share of any unexpended funds approved and contracted for the project.

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 May 8, 2000.

TRD-200003217
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 463-4075

♦ ♦ ♦

Chapter 29. TEXAS AGRICULTURAL DIVERSIFICATION PROGRAM: MATCHING GRANTS

4 TAC §§29.1, 29.2, 29.4 - 29.9, 29.11 - 29.13

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

The Texas Agricultural Finance Authority (Authority) of the Texas Department of Agriculture proposes the repeal of §§29.1, 29.2, 29.4 - 29.9, and 29.11 - 29.13 (Chapter 29), concerning the Authority's Texas Agricultural Diversification Matching Grants Program. The repeal of Chapter 29 is proposed because the statutory authority establishing the matching grants program has been repealed. The proposed repeal of Chapter 29 eliminates

the Texas Agricultural Diversification Matching Grants Program rules.

Robert Kennedy, deputy assistant commissioner for finance, has determined that for the first five-year period the repeal of Chapter 29 is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kennedy also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro- businesses or small businesses and to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Texas Department of Agriculture, Deputy Assistant Commissioner for Finance, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §58.023 which provides the Authority with the authority to adopt rules to administer programs established by the Authority board.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapters 44 and 58.

§29.1. Purpose.
§29.2. Definitions.
§29.4. Criteria for All Grants.
§29.5. Money for Grants.
§29.6. Research and Innovation Grant.
§29.7. Business Assistance Grant.
§29.8. Small Business Incubator Grant.
§29.9. Grant Awards Process.
§29.11. Format for Proposal.
§29.12. Deadline for Submission.
§29.13. Other Information.

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 May 5, 2000.

TRD-200003172
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter A. GENERAL PROVISIONS

16 TAC §26.5

The Public Utility Commission of Texas (commission) proposes an amendment to §26.5 relating to Definitions.

The proposed amendment seeks to incorporate changes and additions required as a result of rulemakings in Project Number 21155, *Rulemaking to Implement PURA Chapter 58 provisions relating to Customer Specific Contracts, Packaging Flexibility and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 provisions to Withdrawal of Election, Rate Caps and Rate Adjustments, Packaging Flexibility and Pricing for Non-Basic Services*; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, Pricing and Packaging Flexibility Tariffs pursuant to PURA Chapters 52, 58 and 59*. This proposed amendment, through the aforementioned integration, will provide continuity with the provisions implemented by the 76th Legislature in Senate Bill 560 and the Public Utility Regulatory Act (PURA). Project Number 21169 is assigned to this proceeding. Project Number 21169 also will be employed to make later changes to the commission's substantive rules related to Senate Bill 560.

The proposed amendment also: (1) removes references to Chapter 23 as a result of the commission's reorganization of its rules and the move of the telecommunications-related substantive rules to Chapter 26, and; (2) modifies the definition of the term "electric utility" to comply with the new definition of electric utility in PURA and the commission's rules in Chapter 25, *Substantive Rules Applicable to Electric Service Providers.*

Rick Akin, Chief Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Akin has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the section will be to provide clear definitions for terms employed within the substantive rules that are consistent with the provisions of Senate Bill 560 and the Public Utility Regulatory Act. Such consistency in the definition of terms proposed by this amendment will facilitate understanding of the mandates imposed by Senate Bill 560 and PURA. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21169.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2000) (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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§26.5. Definitions.

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

(1) Access customer – Any user of access services which are obtained from a certificated telecommunications utility. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(2) Access services – Certificated telecommunications utility services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services. [~~In Chapter 23 of this title (relating to Substantive Rules), this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

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

(12) Basic network services (BNS) – Those services identified [~~as defined~~] in PURA §58.051[~~, and any other service the commission subsequently categorizes as a basic network service~~].

(13) - (38) (No change.)

(39) Competitive exchange service – Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; [{]high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) [~~§23.27 of this title (relating to Rate-Setting Flexibility)~~]; any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(40) - (58) (No change.)

(59) Dedicated signaling transport – Transmission of out-of-band signaling information between an access customer's common channel signaling network and a certificated telecommunications utility's signaling transport point on facilities dedicated to the use of a single customer. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(60) (No change.)

(61) Direct-trunked transport – Transmission of traffic between the serving wire center and another certificated telecommunications utility's office, without intermediate switching. It is charged on a flat-rate basis.[~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(62) - (70) (No change.)

(71) Electric utility – Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Substantive Rules Applicable to Electric Service Providers), an electric utility is:

[~~(A)~~] A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) [~~(i)~~] a municipal corporation;

(B) [~~(ii)~~] a qualifying facility;

(C) a power generation company

(D) [~~(iii)~~] an exempt wholesale generator;

(E) [~~(iv)~~] a power marketer;

(F) [~~(v)~~] a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer; [~~or~~]

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) [~~(vi)~~] a person not otherwise an electric utility who:

(i) [~~(I)~~] furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) [~~(II)~~] owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) [~~(III)~~] owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

~~[(B) With respect to transmission service and ancillary service, the term includes municipally owned utilities and river authorities that are not otherwise subject to the commission's ratesetting authority.]~~

(72) (No change.)

(73) Eligible telecommunications provider (ETP) service area – The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 [~~§23.133 or §23.134~~] of this title (relating to Texas High Cost Universal Service

Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(74) - (82) (No change.)

(83) Extended local calling service (ELCS) – Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Scope Surcharges) [~~§23.49(c) of this title (relating to Telephone Extended Area Service and Expanded Toll-free Local Calling Areas)~~].

(84) - (95) (No change.)

(96) High cost assistance (HCA) – A program administered by the commission in accordance with the provisions of §26.403 [~~§23.133~~] of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(97) - (99) (No change.)

(100) Informational notice – That notice required to be filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility pursuant to PURA Chapters 52, 58, or 59.

(101) [~~(100)~~] Information sharing program – Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(102) [~~(101)~~] Integrated services digital network (ISDN) – a digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(103) [~~(102)~~] Interactive multimedia communications – Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(104) [~~(103)~~] Intercept service – A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(105) [~~(104)~~] Interconnection - Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly [~~particularily~~] it means: The termination of local traffic [~~(~~]including basic telecommunications service as delineated in §24.32 of this title (Relating to Universal Service) or integrated services digital network (ISDN) as defined in this section and/or extended area service/extended local calling service traffic of a certificated telephone utility (CTU) using the local access lines of another CTU, as described in section §26.272(d)(4)(A) [~~§23.97(d)(4)(A)(i)~~] of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section [~~§23.57 of this title (relating to Telecommunications Privacy)~~], unless otherwise permitted in §26.272 [~~§23.97~~] of this title.

(106) [~~(105)~~] Interconnector – A customer that interfaces with the dominant carrier's network under the provisions of §26.271 [~~§23.92~~] of this title (relating to Expanded Interconnection).

(107) [~~(106)~~] Interexchange carrier (IXC) – A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a certificated telecommunications utility (CTU) or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

(A) the furnishing, or furnishing and maintenance of a private system;

(B) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(D) the provision of shared tenant service.

(108) [~~(107)~~] Interoffice trunks – Those communications circuits which connect central offices.

(109) [~~(108)~~] IntraLATA equal access – The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(110) [~~(109)~~] Intrastate – Refers to communications which both originate and terminate within Texas state boundaries.

(111) [~~(110)~~] Least cost technology – The technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

(112) [~~(111)~~] License – The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(113) [~~(112)~~] Licensing – The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(114) [~~(113)~~] Lifeline Service – A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(115) [~~(114)~~] Line – A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(116) [~~(115)~~] Local access and transport area (LATA) – A geographic area established for the provision and administration

of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(117) [~~(116)~~] Local call – A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory extended area service (EAS) or expanded local calling (ELC) proceeding.

(118) [~~(117)~~] Local calling area – The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(119) [~~(118)~~] Local exchange company (LEC) – A telecommunications utility that has been granted either a certificate of convenience and necessity or a certificate of operating authority to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(120) [~~(119)~~] Local exchange telephone service or local exchange service – A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services;

(J) a competitive exchange service; or

(K) any other service the commission determines is not a "local exchange telephone service."

(121) [~~(120)~~] Local message – A completed call between customer access lines located within the same local calling area.

(122) [~~(121)~~] Local message charge – The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(123) [~~(122)~~] Local service charge – The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(124) [~~(123)~~] Local telecommunications traffic –

(A) Telecommunications traffic between a dominant certificated telecommunications utility (DCTU) and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory extended area service (EAS) areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(125) [~~(124)~~] Long distance telecommunications service – That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(126) [~~(125)~~] Long run – A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(127) [~~(126)~~] Long run incremental cost (LRIC) – The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(128) [~~(127)~~] Mandatory minimum standards – The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(129) [~~(128)~~] Meet point billing – An access billing arrangement for services to access customers when local transport is jointly provided by more than one certificated telecommunications utility. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(130) [~~(129)~~] Message – A completed customer telephone call.

(131) [~~(130)~~] Message rate service – A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(132) [~~(131)~~] Minor change – A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 10%.

(133) [~~(132)~~] Municipality – A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(134) [~~(133)~~] National integrated services digital network (ISDN) – the standards and services promulgated for integrated services digital network by Bellcore.

(135) [~~(134)~~] Negotiating party – A certificated telecommunications utility (CTU) or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(136) [~~(135)~~] New service – Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(137) Nonbasic services – Those services identified in PURA §58.151, including any service reclassified by the commission pursuant to PURA §58.024.

(138) [~~(136)~~] Non-discriminatory – Type of treatment that is not less favorable than that an interconnecting certificated telecommunications utility (CTU) provides to itself or its affiliates or other CTUs.

(139) [~~(137)~~] Non-dominant certificated telecommunications utility (NCTU) – A certificated telecommunications utility (CTU) that is not a dominant certificated telecommunications utility (DCTU) and has been granted a certificate of convenience and necessity (CCN) (after September 1, 1995, in an area already certificated to a DCTU), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) to provide local exchange service.

(140) [~~(138)~~] Nondominant carrier –

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(141) [~~(139)~~] Open network architecture – The overall design of an incumbent local exchange company's (ILEC's) network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(142) [~~(140)~~] Operator service – Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(143) [~~(141)~~] Operator service provider (OSP) – Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(144) [~~(142)~~] Originating line screening (OLS) – A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(145) [~~(143)~~] Out-of-service trouble report – An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(146) [~~(144)~~] Partial deregulation – The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(147) [~~(145)~~] Pay-per-call-information services – Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(148) [~~(146)~~] Pay telephone access service (PTAS) – A service offered by a certificated telecommunications utility which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(149) [~~(147)~~] Pay telephone service (PTS) – A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premise's owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premise's owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(150) [~~(148)~~] Per-call blocking – A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(151) [~~(149)~~] Per-line blocking – A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(152) [~~(150)~~] Percent interstate usage (PIU) – An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the certificated telecommunications utility (CTU) unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched

access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.[~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(153) [~~(151)~~] Person – Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(154) [~~(152)~~] Pleading – A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(155) [~~(153)~~] Prepaid local telephone service (PLTS) – Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the dominant certificated telecommunications utility (DCTU);

(B) if applicable, mandatory services, including extended area service, extended metropolitan service, or expanded local calling service;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

(F) the ability to report service problems seven days a week;

(G) access to business office;

(H) primary directory listing;

(I) toll blocking service; and

(J) non-published service and non-listed service at the customer's option.

(156) [~~(154)~~] Premises – A tract of land or real estate including buildings and other appurtenances thereon.

(157) [~~(155)~~] Pricing flexibility – Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

(A) customer specific contracts;

(B) volume, term, and discount pricing;

(C) zone density pricing;

(D) packaging of services; and

(E) other promotional pricing flexibility.

(158) [~~(156)~~] Primary interexchange carrier (PIC) – The provider chosen by a customer to carry that customer's toll calls.

(159) [~~(157)~~] Primary interexchange carrier (PIC) freeze indicator – An indicator that the end user has directed the certificated telecommunications utility to make no changes in the end user's PIC.

(160) [~~(158)~~] Primary rate interface (PRI) integrated services digital network (ISDN) – One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.

(161) [~~(159)~~] Primary service – The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(162) [~~(160)~~] Print translations – The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(163) [~~(161)~~] Privacy issue – An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

(A) the type of information about a customer that is released;

(B) the customers about whom information is released;

(C) the entity or entities to whom the information about a customer is released;

(D) the technology used to convey the information;

(E) the time at which the information is conveyed; and

(F) any other change in the collection, use, storage, or release of information.

(164) [~~(162)~~] Private line – A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(165) [~~(163)~~] Proceeding – A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(166) [~~(164)~~] Promotional rate – A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (DCTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(167) [~~(165)~~] Provider of pay telephone service – The entity that purchases pay telephone access service (PTAS) from a certificated telecommunications utility (CTU) and registers with the Public Utility Commission as a provider of pay telephone service (PTS) to end users.

(168) [~~(166)~~] Public utility or utility – A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination

of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(169) [~~(167)~~] Public Utility Regulatory Act (PURA) – The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 64.158 [~~63.063~~], (Vernon 1998, Supplement 2000).

(170) [~~(168)~~] Qualifying low-income consumer – A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(171) [~~(169)~~] Qualifying services –

(A) residential flat rate basic local exchange service;

(B) residential local exchange access service; and

(C) residential local area calling usage.

(172) [~~(170)~~] Rate – Includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §§31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(173) [~~(171)~~] Reciprocal compensation – An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(174) [~~(172)~~] Reclassification area – The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(175) [~~(173)~~] Redirect the call – A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(176) [~~(174)~~] Regulatory authority – In accordance with the context where it is found, either the commission or the governing body of a municipality.

(177) [~~(175)~~] Relay Texas Advisory Committee (RTAC) – The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(178) [~~(176)~~] Relay Texas – The name by which telecommunications relay service in Texas is known.

(179) [~~(177)~~] Relay Texas administrator – The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(180) [~~(178)~~] Repeated trouble report – A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(181) [~~(179)~~] Residual charge – The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(182) [~~(180)~~] Retail service – A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(183) [~~(181)~~] Return-on-assets – After-tax net operating income divided by total assets.

(184) [~~(182)~~] Reversal of partial deregulation – The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(185) [~~(183)~~] Rule – A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(186) [~~(184)~~] Rulemaking proceeding – A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, §§2001.021 - 2001.037 to adopt, amend, or repeal a commission rule.

(187) [~~(185)~~] Rural incumbent local exchange company (ILEC) – An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(188) [~~(186)~~] Selective routing – The feature provided with 311 service by which 311 calls are automatically routed to the 311 answering point for serving the place from which the call originates.

(189) [~~(187)~~] Separation – The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(190) [~~(188)~~] Service – Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(191) [~~(189)~~] Service connection charge – A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(192) [~~(190)~~] Service provider – Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

(193) [~~(191)~~] Service provider certificate of operating authority (SPCOA) reseller – A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an incumbent local exchange company (ILEC) or by a certificate of operating authority (COA) holder or by a service provider certificate of operating authority (SPCOA) holder.

(194) [~~(192)~~] Service restoral charge – A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(195) [~~(193)~~] Serving wire center (SWC) – The certificated telecommunications utility designated central office which serves the access customer's point of demarcation. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(196) [~~(194)~~] Signaling for tandem switching – The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(197) [~~(195)~~] Small certificated telecommunications utility (CTU) – A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(198) [~~(196)~~] Small local exchange company (SLEC) – Any incumbent certificated telecommunications utility as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(199) [~~(197)~~] Small incumbent local exchange company (Small ILEC) – An incumbent local exchange company that is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in Texas.

(200) [~~(198)~~] Spanish speaking person – a person who speaks any dialect of the Spanish language exclusively or as their primary language.

(201) [~~(199)~~] Special access – A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(202) [~~(200)~~] Specialized Telecommunications Assistance Program (STAP) – The program described in Substantive Rule §26.415 of this title (relating to Specialized Telecommunications Assistance Program).

(203) [~~(201)~~] Specialized Telecommunications Assistance Program (STAP) voucher – A voucher issued by the Texas Commission for the Deaf and Hard of Hearing under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(204) [~~(202)~~] Stand-alone costs – The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(205) [~~(203)~~] Station – A telephone instrument or other terminal device.

(206) [~~(204)~~] Study area – An incumbent local exchange company's (ILEC's) existing service area in a given state.

(207) [~~(205)~~] Supplemental services – Telecommunications features or services offered by a certificated telecommunications utility for which analogous services or products may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests) [~~§23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Area)~~], or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(208) [~~(206)~~] Suspension of service – That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(209) [~~(207)~~] Switched access – Access service that is provided by certificated telecommunications utilities (CTUs) to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(210) [~~(208)~~] Switched access demand – Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(211) [~~(209)~~] Switched access minutes – The measured or assumed duration of time that a certificated telecommunications utility's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(212) [~~(210)~~] Switched transport – Transmission between a certificated telecommunications utility's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(213) [~~(211)~~] Tandem-switched transport – Transmission of traffic between the serving wire center and another certificated telecommunications utility office that is switched at a tandem switch

and charged on a usage basis. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(214) [~~(212)~~] Tariff – The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(215) [~~(213)~~] Tel-assistance service – A program providing eligible consumers with a 65% reduction in the applicable tariff rate for qualifying services.

(216) [~~(214)~~] Telecommunications relay service (TRS) – A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(217) [~~(215)~~] Telecommunications relay service (TRS) carrier – The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(218) [~~(216)~~] Telecommunications utility -

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned pay telephone service; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(219) [~~(217)~~] Telephones intended to be utilized by the public – Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(220) [~~(218)~~] Telephone solicitation – An unsolicited telephone call.

(221) [~~(219)~~] Telephone solicitor – A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(222) [~~(220)~~] Test year – The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(223) [~~(221)~~] Texas Universal Service Fund (TUSF) – The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(224) [~~(222)~~] Tier 1 local exchange company – A local exchange company with annual regulated operating revenues exceeding $100 million.

(225) [~~(223)~~] Title IV-D Agency – The office of the attorney general for the state of Texas.

(226) [~~(224)~~] Toll blocking – A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(227) [~~(225)~~] Toll control – A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(228) [~~(226)~~] Toll limitation – Denotes both toll blocking and toll control.

(229) [~~(227)~~] Total element long-run incremental cost (TELRIC) – The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the certificated telecommunications utility's (CTU's) provision of other elements. [~~In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.~~]

(230) [~~(228)~~] Transport – The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a dominant certificated telecommunications utility.

(231) [~~(229)~~] Trunk – A circuit facility connecting two switching systems.

(232) [~~(230)~~] Two-primary interexchange carrier (Two-PIC) equal access – A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(233) [~~(231)~~] Unauthorized charge – Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(234) [~~(232)~~] Unbundling – The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(235) [~~(233)~~] Unit cost – A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(236) [~~(234)~~] Usage sensitive blocking – Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(237) [~~(235)~~] Virtual private line – Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(238) [~~(236)~~] Voice carryover – A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(239) [~~(237)~~] Volume insensitive costs – The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(240) [~~(238)~~] Volume sensitive costs – The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(241) [~~(239)~~] Wholesale service – A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(242) [~~(240)~~] Working capital requirements – The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(243) [~~(241)~~] "0-" call – A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(244) [~~(242)~~] "0+" call – A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(245) [~~(243)~~] 311 answering point – A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(246) [~~(244)~~] 311 service – A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(247) [~~(245)~~] 311 service request – A written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(248) [~~(246)~~] 311 system – A system of processing 311 calls.

(249) [~~(247)~~] 911 system – A system of processing emergency 911 calls, as defined in Tex. Health & Safety Code §772.001, as may be subsequently amended.

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 May 4, 2000.

TRD-200003137
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

Subchapter J. COSTS, RATES AND TARIFFS

16 TAC §26.212, §26.213

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

The Public Utility Commission of Texas (commission) proposes the repeal of §26.212, relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs) and §26.213, relating to Telecommunications Pricing. The proposed repeal will delete sections made unnecessary by proposed new §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies. Project Number 21156 has been assigned to this proceeding.

Ms. Jenny Kambhampati, Senior Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Kambhampati has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of deleting the sections will be the replacement of §26.212 and §26.213 with a rule that implements changes enacted as part of Senate Bill 560, Act of May 30, 1999, 76th Legislature, Regular Session, Chapter 1212, 1999 Texas Session Law, 4210 (codified at scattered sections of the Texas Utilities Code Annotated §§58.051, 58.054, 58.055, 58.060, 58.063, and 58.153). There will be no effect on small businesses or micro-businesses as a result of enforcing this repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21157, 21159, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to jennifer.kambhampati@puc.state.tx.us, if possible. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed repeal. The commission will consider the costs and benefits in deciding whether to repeal the section. All comments should refer to Project Number 21156.

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

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

§26.212. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

§26.213. Telecommunications Pricing.

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 May 4, 2000.

TRD-200003130

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 18, 2000

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

♦ ♦ ♦

16 TAC §26.214

The Public Utility Commission of Texas (commission) proposes new §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs). Proposed new §26.214 clarifies the substantive and procedural requirements for filing LRIC studies for ILECs regulated under the Public Utility Regulatory Act (PURA) Chapters 52 and 59. Project Number 21159 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rules created in this project at two workshops convened on November 15, 1999, and March 28, 2000. Commission staff coordinated the product of Project Number 21159 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packing Flexibility, and Promotional Offerings;* Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps, and Rate Adjustments;* Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provision of New Services;* and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59.*

Ms. Anne McKibbin, Senior Economist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McKibbin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be the clarification of the substantive requirements and procedures relating to the filing of LRIC studies by Chapter 52 and 59 companies. There will be no effect on small businesses or micro-businesses resulting from the enforcement of these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to Anne.McKibbin@puc.state.tx.us, if possible. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. All comments should refer to Project Number 21159 and Proposed Rule §26.214.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 §52.0583, regarding new services for non-electing companies; §52.0584, regarding pricing and packaging flexibility requirements for non-electing companies; §52.0585, regarding customer promotional offering requirements for non-electing companies; §59.030, regarding new services for Chapter 59 electing companies; §59.031, regarding pricing and packaging flexibility for Chapter 59 electing companies; and §59.032, regarding customer promotional offering requirements for Chapter 59 electing companies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.0583, 52.0584, 52.0585, 59.030, 59.031, and 59.032.

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs).

(a) Application. This section shall apply to ILECs with annual revenues from regulated telecommunications operations in Texas of less than $100 million for five consecutive years.

(b) Purpose. This section shall be used to determine the long run incremental costs incurred by ILECs in the provision of telecommunications services in those instances in which the ILEC chooses to establish LRIC studies.

(c) LRIC studies. An ILEC may establish a service's LRIC by submitting a LRIC cost study that conforms to the following general requirements:

(1) A LRIC study must identify the ILEC's investment in all facilities that reflect forward looking least cost technology, as set forth in §26.215(f)(3) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), used in the provision of the service.

(2) A LRIC study must apply appropriate loading and fill factors associated with the service.

(3) A LRIC study must apply appropriate annual cost factors, including but not limited to depreciation and cost of money, associated with the service.

(4) A LRIC study must identify non-capital costs associated with the service, including but not limited to maintenance, billing and collection, and marketing costs.

(d) Procedures for review of LRIC studies filed under subsection (c) of this section. A LRIC study considered under this section shall be reviewed administratively to determine whether the ILEC's LRIC study is consistent with the requirements of this section.

(1) Notice. At least ten days before an ILEC files any LRIC study pursuant to this section, the ILEC shall file with the commission and the Office of Public Utility Counsel a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice shall indicate that the filing is being made pursuant to this section. The commission shall then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register.*

(2) Sufficiency. The LRIC study shall be examined for sufficiency. To be sufficient, the LRIC study shall conform to the requirements of this section.

(A) Except as required under subparagraph (B) of this paragraph, if the commission staff concludes that material deficiencies exist in the LRIC study, the ILEC shall be notified by the commission staff of the specific deficiency within three working days after the filing date of the LRIC study. The ILEC shall have two working days after the date it is notified of the deficiency to file a corrected LRIC study. On or before five working days after the date of the ILEC response, the presiding officer shall issue an order with regard to the sufficiency.

(B) If the LRIC study filed for approval pursuant to this section is also filed simultaneously as part of an informational notice filing and a contested case arises as a result of the dispute regarding sufficiency of the LRIC study filed as part of the informational notice filing, the review of LRIC study pursuant to this section shall be abated pending the resolution of the contested case.

(3) Time Schedule.

(A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the sufficient LRIC study, Office of Public Utility Counsel (OPUC) may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, the commission staff shall file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates justiciable interest, OPUC, or the ILEC may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer shall issue a notice stating whether the ILEC's LRIC study is consistent with the requirements of this section. In this notice, the presiding officer shall approve the LRIC study or order the ILEC to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative notice by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal, added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders a cost study to be changed, the ILEC shall be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(G) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. Copies of all answers to such requests for information shall be provided within ten days after receipt of the request by the ILEC to the commission staff, OPUC, and any party that demonstrates a justiciable interest.

(H) Suspension. At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPUC, the ILEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only upon determination that the party has demonstrated a good cause exists for the suspension.

(I) Effective date of the LRIC study. The effective date of the LRIC study shall be the date it is approved by the presiding officer.

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 May 4, 2000.

TRD-200003131
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.224

The Public Utility Commission of Texas (commission) proposes new §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

The commission has also proposed the repeal of §26.212, relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs), and §26.213, relating to Telecommunications Pricing in this issue of the *Texas Register*.

The proposed new section clarifies the substantive and procedural requirements relating to rate changes for basic network services for Chapter 58 companies and will replace §26.212 and §26.213. Project Number 21156 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rule created in this project at two workshops convened on December 15, 1999, and March 28, 2000. Since the December workshop, commission staff coordinated the product of this project with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings* and in conjunction with Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*; Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provisions of New Services*; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59*.

The language herein describes the requirements relating to basic network services for Chapter 58 companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21157 will propose P.U.C. Substantive Rule §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies. Project Number 21155 will propose P.U.C. Substantive Rule §26.226, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies. Finally, Project Number 21161 will propose P.U.C. Substantive Rule §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

Ms. Jenny Kambhampati, Senior Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Kambhampati has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the procedures relating to rate increases and decreases for basic network services of Chapter 58 companies. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21157, 21159, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to jennifer.kambhampati@puc.state.tx.us, if possible. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21156.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 §58.051, which delineates basic network services for Chapter 58 companies, §58.054 which sets forth the cap on rates for basic network services for Chapter 58 companies, §58.055 which sets forth the circumstances under which Chapter 58 companies may adjust rates for basic network services during the rate cap period, §58.060 which sets forth the requirements for adjusting the rate for a basic network service after the rate cap period, §58.153 requires that certain notice be provided by Chapter 58 companies with more than five million access lines in the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 58.051, 58.054, 58.055, 58.060, 58,153.

§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

(a) Application. This section applies to any electing company, as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to, §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

(b) Purpose. This section establishes requirements and procedures relating to the provision of basic network services.

(c) Basic network services.

(1) Services included in basic network services. Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services:

(A) Flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(B) Residential tone dialing service;

(C) Lifeline and tel-assistance service;

(D) Service connection for basic residential services;

(E) Direct inward dialing service for basic residential services;

(F) Private pay telephone access service;

(G) Call trap and trace service;

(H) Access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service;

(I) Mandatory residential extended area service arrangements;

(J) Mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and

(K) Residential call waiting service.

(2) Separate tariff requirement. A basic network service offered by an electing company to a customer as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.

(3) Basic network service rates capped. The rates for basic network services for an electing company may not increase before September 1, 2005, except as provided for in subsection (f) of this section, relating to rate increases prior to the rate cap expiration.

(4) Basic network service rates charged. The rates an electing company may charge during the period in which rates are capped are the rates charged by the company on June 1, 1995, or, for a company that elects after September 1, 1999, the rates charged on the date of its election.

(5) Pricing flexibility. An electing company may offer pricing flexibility for basic network services pursuant to the requirements of §26.226 of this title.

(d) Requirement for changes to terms of a tariff offering. Prior to being offered, a change in the terms of the tariff offering, including rate increases and decreases of a basic network service, must receive commission approval. Section 26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) shall apply to tariffs offering a basic network service.

(e) Establishment of a long run incremental cost floor. For purposes of this section, long run incremental cost (LRIC) shall be consistent with §26.215 of this title (relating to relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.215 of this title. After commission approval of a LRIC floor for a particular service, an electing company may change the rates of that service in accordance with the procedures in this section. The procedures in subsection (i) of this section, relating to rate decreases for basic network services, may not be available to an electing company for a service that does not have a LRIC floor.

(f) Rate increase prior to rate cap expiration. For a four-year period following Chapter 58 election or September 1, 2005, whichever occurs later, an increase in the rate for a basic network service is permitted only after commission approval and only within the following parameters:

(1) A rate increase for changes made by the Federal Communications Commission, as provided by PURA §58.056;

(2) A rate increase for companies with fewer than five million access lines that are complying with infrastructure commitments, as provided by PURA §58.057;

(3) A rate group reclassification, as provided by PURA §58.058.

(g) Procedure for a rate increase prior to rate cap expiration.

(1) Prior to the rate cap expiration, an application is required to increase the rate for a basic network service. The application shall refer to this section, and must provide sufficient documentation to demonstrate that the rate increase meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify the classes of customers and competitors to be affected by the electing company's application. The application shall also include any tariff sheets reflecting the proposed basic network service rate increase, as well as all data necessary to support the application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing company's preferred effective date, which shall be no earlier than 90 days after completion of notice.

(2) The commission shall cause notice of the application to be published in the *Texas Register.* The published notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register*, the presiding officer shall establish a deadline for the filing of a staff recommendation, which shall be no earlier than five days following the intervention deadline.

(3) Within 20 days of filing of the application, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.

(4) Within 50 days of filing of the application, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.

(5) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the rate increase and may hold a hearing. Within 185 days of the filing of a sufficient application, the commission shall issue an order approving or modifying the rate increase, or rejecting the rate increase, if it is not in compliance with this section and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate increase shall specify why the proposed increase is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed increase may be brought into compliance.

(h) Rate increase after rate cap expiration. After a four-year period following Chapter 58 election or September 1, 2005, whichever occurs later, a rate increase following the rate cap expiration may be made pursuant to PURA §58.060.

(i) Rate decrease. An electing company may decrease a rate for a basic service at any time. The electing company may decrease the rate for a basic service rate to an amount above the service's long run incremental cost. If the electing company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

(1) After commission approval of a LRIC floor, an electing company shall follow the procedures in this subsection to decrease

a rate for a basic network service or to change the tariff terms of a basic network service.

(2) An electing company shall file an application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing company shall file one or more tariff sheets to decrease a rate for or change the terms of a basic network service with the application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause a notice of the application to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(j) Proprietary or confidential information.

(1) Information filed pursuant to this rule is presumed to be public information. An electing company shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing company that intends to rely upon data it purports is poprietary or confidential in support of an application mad pursuant to this section shall submit one copy of the proprietary or confidential data to the Office of Regulatory Affairs subject to a commission-approved protection agreement. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(k) Additional notice requirement for an electing company serving more than five million access lines. In addition to the notice requirements of §26.208 of this title and those applicable to informational notice filings, until September 1, 2003, an electing company serving more than five million access lines in this state shall:

(1) Comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:

(A) Introduction of any new features or functions of basic services;

(B) Promotional offerings of basic services; or

(C) Discontinuation of then-current features or services.

(2) Notice shall be provided to the following persons:

(A) A person who holds a certificate of operating authority in the electing company's certificated area or areas; or

(B) A person who has an effective interconnection agreement with the electing company.

(3) The following timelines shall apply to the additional notice requirement:

(A) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(B) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(l) Semi-annual notice for rates or terms of service. Semi-annually, an electing company shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of basic network services are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The notification shall identify the Internet address for the *Texas Register* (www.sos.state.tx.us) and shall provide a toll-free phone number for affected persons to request direct notice from an electing company of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certificated by the commission to provide local exchange telephone service.

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

Filed with the Office of the Secretary of State, on May 4, 2000.

TRD-200003129
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.225

The Public Utility Commission of Texas (commission) proposes new §26.225 relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies.

The proposed new section establishes substantive requirements affecting nonbasic services offered by Chapter 58 companies. Project Number 21157 is assigned to this proceeding.

The commission staff received comments on proposed §26.225 from interested persons at workshops held on November 15, 1999 and March 28, 2000. The November 15, 1999 workshop focused on Senate Bill 560 implementation. The March 28, 2000 workshop focused on several rules drafted for discussion.

In addition, the commission staff coordinated the end product of Project Number 21157 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps and Rate Adjustments*; Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing*

and Packaging Flexibility for PURA Chapter 52 and 59 Companies; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59.*

The language herein describes requirements relating to nonbasic services for Chapter 58 companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21155 proposes §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). Project Number 21156 proposes §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies). Finally, Project Number 21161 proposes §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

Ms. Lynne LeMon, Senior Utility Specialist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. LeMon has determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the proposed section will be establishment of the commission's requirements relating to nonbasic services so that nonbasic services are offered by Chapter 58-electing companies to customers in a manner that is not anticompetitive, discriminatory, prejudicial, predatory or preferential. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21159, and 21161 under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication in the *Texas Register*. Reply comments may be submitted within 45 days after publication in the *Texas Register*. In addition, the commission staff requests that commentors e-mail an electronic copy of comments and reply comments to 21157mail@puc.state.tx.us.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites comments on whether it is appropriate that proposed subsection (d)(1)(C) contain an anticompetitive standard with respect to pricing, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21157.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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, Chapter 58, Subchapter E, pertaining to nonbasic services and PURA, Chapter 60, pertaining to competitive safeguards.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 51.002 and 51.004; Chapter 58 and Chapter 60.

§26.225. Requirements Applicable to Nonbasic services For Chapter 58 Electing Companies.

(a) Application. This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.)

(b) Purpose. The purpose of this section is to establish requirements for nonbasic services.

(c) Nonbasic services.

(1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:

(A) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone;

(B) business tone dialing service;

(C) service connection for all business services;

(D) direct inward dialing (DID) for basic business services;

(E) public pay telephone services, 0+ and 0- operator services and directory assistance services;

(F) call forwarding, call return, caller identification, call waiting and other custom calling services and call control options, except that residential call waiting is a basic network service;

(G) speed dialing and three-way calling;

(H) central office based PBX-type services;

(I) billing and collection services, including installment billing and late payment plans for electing company customers;

(J) integrated services digital network (ISDN) services;

(K) new services;

(L) 1-plus intraLATA message toll service (MTS);

(M) services described in the WATS tariff of an electing company as the tariff existed on January 1, 1995;

(N) 800 service and foreign exchange service;

(O) private line services and special access services;

(P) paging services and mobile services (IMTS);

(Q) 911 service provided to a local authority, if the service is available from a provider other than the electing company;

(R) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in PURA §58.051;

(S) any basic network service reclassified by the commission as a nonbasic service pursuant to PURA §58.024.

(2) Consistent with PURA §58.155, neither interconnection to competitive providers nor interconnection for commercial mobile service providers is addressed in this section.

(d) Substantive requirements. An electing company that seeks to introduce or modify rates, terms or conditions of a nonbasic service tariff shall follow the substantive requirements in this section and the procedural requirements in §26.227 of this title. Additionally, an electing company that seeks to flexibly price a nonbasic service shall follow the requirements in §26.226 of this title.

(1) Pricing standards. The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(A) Price ceilings. This subparagraph specifies the price ceilings for certain nonbasic services. Except as specified in this subparagraph, nonbasic services have no price ceiling.

(i) Until September 1, 2005, a nonbasic service listed in subsection (c)(1)(A)-(D) of this section shall be priced at or below the price in effect on September 1, 1999.

(ii) Until September 1, 2005, a Basic Rate Interface (BRI) ISDN service, which comprises up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be priced at or below the price in effect on September 1, 1999.

(iii) Until an electing company that serves more than five million access lines implements the reductions in switched access rates described in PURA §58.301(2), residential nonbasic services listed in subsection (c)(1)(F) of this section shall be priced at or below the prices in effect on September 1, 1999.

(iv) An electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at a maximum price of zero dollars ($.00).

(v) Consistent with PURA §58.302, switched access services shall be priced at or below the lesser of the rates in effect on September 1, 1999, or the applicable rates described in PURA §58.301, either of which may be further reduced via the Texas universal service fund.

(B) Price floors. A price that is set at or above the long run incremental cost of providing a service is presumed not to be a predatory price. The long run incremental cost of a nonbasic service must be established before the price floor of a nonbasic service can be determined, pursuant to PURA §58.152. Establishment of a long run incremental cost requires commission approval of a cost study prepared by an electing company pursuant to §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Any application to establish or modify a long run incremental cost shall be filed by an electing company with the commission's Filing Clerk on or before the date a related informational notice is filed. Such an application shall be filed separately from the related informational notice. The minimum price of a nonbasic service shall be the lesser of:

(i) the price for the service in effect on September 1, 1999, except that this clause shall not be considered for services that had either a rate of zero or no existing rate on September 1, 1999; or

(ii) the long run incremental cost of the service in accordance with the imputation rules and requirements prescribed by or under PURA, Chapter 60, Subchapter D.

(C) Anticompetitive price. There is a rebuttable presumption that the price of a nonbasic service is anticompetitive against a competitor if an electing company's retail price for a nonbasic service is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the nonbasic service.

(2) Separately tariffed services. Any nonbasic service offered by an electing company to customers as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.

(e) New service.

(1) A new service, as the term is defined in §26.5 of this title (relating to Definitions), is a nonbasic service under subsection (c)(1)(K) of this section.

(2) To introduce a new service tariff, an electing company shall follow the requirements in this section and the procedures in §26.227 of this title. If a new service is offered by an electing company as a component of a package, the new service shall also be offered as a separately tariffed service and the separately tariffed service shall be subject to the pricing standards in subsection (d) of this section.

(3) A package of services that includes one or more new services and one or more existing services shall not be considered a new service. To introduce such a package, an electing company shall follow the requirements in this section, the requirements in §26.226 of this title and the procedures in §26.227 of this title.

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

Filed with the Office of the Secretary of State, on May 4, 2000.

TRD-200003135
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.226

The Public Utility Commission of Texas (commission) proposes new §26.226, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.

The proposed new rule will establish substantive requirements governing pricing flexibility offerings by Chapter 58 companies. The proposed new rule defines pricing flexibility, establishes pricing standards for flexibly priced offerings, and sets forth requirements for customer-specific contracts, packaging and

promotional offerings, and term and volume discounts. Project Number 21155 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rule created in this project at two workshops convened on November 15, 1999, and March 28, 2000. The November 15, 1999 workshop focused on implementation of Senate Bill 560, while the March 28, 2000 workshop focused on several rules drafted for discussion.

Commission staff coordinated the product of this project with Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Withdrawal of Election, Rate Caps and Rate Adjustments, Packaging Flexibility, and Pricing for Nonbasic Services* and in conjunction with Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*; Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provisions of New Services*; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58, and 59.*

The language herein describes the requirements relating to pricing flexibility for Chapter 58 Companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21156 will propose §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies. Project Number 21157 will propose §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies. Finally, Project Number 21161 will propose §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

Martin Wilson, Attorney, Office of Regulatory Affairs, and Diana Zake, Chief Policy Analyst, Office of Policy Development, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Martin Wilson and Diana Zake have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be establishment of the conditions by which companies electing under PURA Chapter 58 may exercise pricing flexibility, which is one of the benefits afforded such companies by statute in return for their acceptance of additional specified obligations. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Martin Wilson and Diana Zake have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21156, 21157, 21159, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 in the Commissioners Hearing Room.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites comments on whether it is appropriate that proposed subsection (d)(3) contain an anti-competitive standard with respect to pricing, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21155.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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; specifically, PURA §58.003 contains provisions for customer specific contracts, §58.004 outlines requirements for packaging, term and volume discounts, and promotional offerings, §58.063 sets forth requirements for pricing and packaging flexibility, §58.152 sets forth pricing standards, and §58.153 requires that certain notice be provided by Chapter 58 companies with more than five million access lines in the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 51.002(7), 51.004(a) and (b), 58.003, 58.004, 58.063(a)-(c), 58.152(b), 58.153(b).

§26.226. Requirements Applicable to Pricing Flexibility for Chapter 58-Electing Companies.

(a) Application. This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to §26.211 of this title (relating to Rate-Setting for Services Subject to Significant Competitive Challenges), §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies) and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

(b) Purpose. The purpose of this section is to establish requirements for a Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.

(c) Pricing flexibility. An electing ILEC shall offer pricing flexibility in accordance with subsections (d)-(g) of this section and §26.227 of this title.

(1) Pricing flexibility includes:

(A) customer specific contracts;

(B) packaging of services;

(C) volume, term, and discount pricing;

(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(2) A discount or other form of pricing flexibility for a basic or nonbasic service may not be preferential, prejudicial, discriminatory, predatory or anticompetitive.

(3) This section does not prohibit a volume discount or other discount based on a reasonable business purpose.

(4) Notwithstanding PURA §58.052(b) or PURA, Chapter 60, Subchapter F, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate.

(5) Except as provided by subsection (f) of this section, an electing company may flexibly price a package that includes a basic network service in any manner provided by paragraph (1) of this subsection.

(6) An electing company may use pricing flexibility for a basic or nonbasic service.

(d) Pricing standards. An electing company exercising pricing flexibility shall price its offerings pursuant to this subsection.

(1) The electing ILEC shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

(A) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or

(B) the sum of tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.

(2) A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(3) There is a rebuttable presumption that the price of the service or package is anti-competitive against a competitor if an electing company's retail price for the service or package of services is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the service or package of services, respectively.

(4) The price of a package of services that includes unregulated products or services, or an affiliate's products or services, shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate's products or services.

(e) Requirements for customer-specific contracts. An electing ILEC may enter into customer-specific contracts for certain nonbasic services as provided in §26.211 of this title. For all basic services and non-basic services not addressed in §26.211 of this title, an electing ILEC must offer customer-specific contracts pursuant to this section.

(1) An electing company serving fewer than five million access lines may offer customer-specific contracts in accordance with this subsection.

(A) An electing company serving fewer than five million access lines shall not offer customer-specific contracts until it notifies the commission of the company's binding commitment to make the following infrastructure improvements not later than September 1, 2000:

(i) install Common Channel Signaling 7 capability in each central office; and

(ii) connect all of the company's serving central offices to their respective local access and transport area (LATA) tandem central offices with optical fiber or equivalent facilities.

(B) The commitments described by subparagraph (A) of this paragraph do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(2) An electing company serving more than five million access lines may offer customer specific contracts in accordance with this subsection.

(A) Unless the other party to the contract is a federal, state, or local governmental entity, an electing company serving more than five million access lines may not offer in an exchange a service, or an appropriate subset of a service, listed in PURA §58.051(a)(1)-(4) or §58.151(1)-(4) in a manner that results in a customer-specific contract:

(i) until the earlier of September 1, 2003; or

(ii) the date on which the commission finds that at least 40% of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

(B) Pursuant to subparagraph (A)(ii) of this paragraph, the commission may find that the following subsets of services are served by an alternative provider that is not affiliated with an ILEC serving more than five million access lines:

(i) flat residential rate local exchange telephone service;

(ii) residential primary directory listings;

(iii) residential tone dialing service;

(iv) lifeline and tel-assistance service;

(v) service connection for basic residential services;

(vi) flat business rate local exchange telephone service;

(vii) business primary directory listings;

(viii) business tone dialing service;

(ix) service connection for all business services;

(x) direct inward dialing for basic business services; and

(xi) receipt of a directory.

(3) This subsection does not preclude an electing company from offering a customer-specific contract to the extent allowed by PURA as of August 31, 1999.

(f) Requirements for packaging and promotional offerings. An electing company that has more than five million access lines in this state may not offer in an exchange a service listed in PURA §58.151(1)-(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by PURA §58.301(2), unless the customer of one of the pricing flexibility offerings described in this

subsection is a federal, state, or local governmental entity. An electing ILEC serving more than five million access lines shall provide notice of promotional offerings of basic or nonbasic services pursuant to PURA §58.153(b), by filing notice pursuant to §26.227 of this title.

(g) Requirements for term and volume discounts. Until September 1, 2000, an electing ILEC serving more than five million access lines shall not offer term or volume discounts on any service listed in PURA §58.151(1)-(4) to entities that are not federal, state or local governments.

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 May 4, 2000.

TRD-200003136
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.227

The Public Utility Commission of Texas (commission) proposes new §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

The proposed new section establishes the procedures for a Public Utility Regulatory Act (PURA) Chapter 58 electing company to introduce nonbasic services, including new services, and to exercise pricing flexibility for basic and nonbasic services and for complaints regarding service offerings introduced through informational notice filings. Project Number 21161 has been assigned to this proceeding.

The commission staff received comments on proposed §26.227 from interested persons at workshops held on November 15, 1999 and March 28, 2000. The November 15, 1999 workshop focused on implementation of Senate Bill 560, while the March 28, 2000 workshop focused on several rules drafted for discussion.

In addition, the commission staff coordinated the end product of Project Number 21161 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps and Rate Adjustments;* Project Number 21157, *Rulemaking to Establish Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies*, and Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapters 52 and 59 companies*.

Melene R. Dodson, Administrative Law Judge, Office of Policy Development and Martin Wilson, Senior Attorney, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Dodson and Mr. Wilson have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the proposed section will be establishment of the commission's procedural requirements relating to nonbasic services and pricing flexibility for basic and nonbasic services offered by Chapter 58-electing companies. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The language herein describes the procedural requirements relating to nonbasic services and pricing flexibility for basic and nonbasic services offered by Chapter 58 companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21155 proposes §26.226, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies. Project Number 21156 proposes §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies. Finally, Project Number 21157 proposes §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies.

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21159 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication in the *Texas Register*. Reply comments may be submitted within 45 days after publication in the *Texas Register*. The commission staff requests that commentors e-mail an electronic copy of comments and reply comments to 21161mail@puc.state.tx.us.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21161.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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, Chapter 58, Subchapter E, pertaining to nonbasic services and pricing flexibility for basic and nonbasic services and PURA, Chapter 60 pertaining to competitive safeguards.

Cross Reference to Statutes: PURA §§14.002, 51.002 and 51.004; PURA, Chapter 58 and Chapter 60.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58-Electing Companies.

(a) Application. This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA)

§58.002 who choose to offer nonbasic services and exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies).

(b) Purpose. The purpose of this section is to establish procedures for an electing company to introduce non-basic services, including new services, and to exercise pricing flexibility for basic and non-basic services, and for complaints regarding service offerings introduced through informational notice filings.

(c) Informational notice filing and notice requirements related to pricing flexibility and non-basic services, including new services.

(1) Notice requirements:

(A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPUC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(B) Additional notice requirements for an electing company serving more than five million access lines. In addition to the notice requirements in subparagraph (A) of this paragraph, an electing company serving more than five million access lines in this state shall:

(i) comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:

(I) introduction of any new nonbasic services;

(II) and new features or functions of nonbasic services;

(III) promotional offerings of nonbasic services; or

(IV) discontinuation of then-current features or services.

(ii) Notice shall be provided to any person who

(I) holds a certificate of operating authority in the electing company's certificate area or areas; or

(II) has an effective interconnection agreement with the electing company.

(iii) The following timelines shall apply to the provisions of notice pursuant to this subsection:

(I) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(II) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(C) The requirement for additional notice under subparagraph (B) of this paragraph expires on September 1, 2003.

(2) Filing requirements:

(A) At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to both OPUC and the commission's Director - Policy Analysis, Telecommunications Industry Analysis Division.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) Staff of the commission's Office of Regulatory Affairs (ORA) shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of ORA's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs), governing the form and filing of tariffs;

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to OPUC, COA holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);

(ix) relevant Long Run Incremental Cost (LRIC) study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study pursuant to §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), to establish a LRIC floor shall be filed before or simultaneously with

the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.215 of this title no later than ten days prior to the filing of the informational notice filing.

(x) A response of "yes", "no", or "not applicable", with explanatory language to the following question: "Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" If the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xi) A response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274(f) - (h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;

(xii) For package offerings that include any unregulated product or service or an affiliate's product or service, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(e)(1) of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), also recovers the cost to the electing company, of offering the unregulated products or services or an affiliate's products or services.

(xiii) description of offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xiv) a privacy concerns statement.

(d) Disputes as to sufficiency or appropriateness of informational notice filing.

(1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(3) Parties other than ORA may not challenge the sufficiency of an informational notice filing.

(e) Complaints regarding service offerings introduced by informational notice filings. An affected person, OPUC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will be considered to initiate a contested case.

(1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.

(2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:

(A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(B) discontinue the service.

(3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.

(5) The commission's Office of Regulatory Affairs shall have standing in all proceedings related to informational notice filings before the commission and need not file a motion to intervene.

(6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of commission Procedural Rule §22.242(c) of this title (relating to Complaints).

(f) Interim relief. A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(A) the pleading must state an appropriate and bona fide cause of action;

(B) the pleading must be verified or supported with affidavits based on personal knowledge; and

(C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

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 May 4, 2000.

TRD-200003128
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.228

The Public Utility Commission of Texas (commission) proposes new §26.228, relating to Requirements Applicable to Chapter 52, Companies.

Proposed new §26.228 clarifies the substantive and procedural requirements relating to new services and packaging and pricing flexibility, including customer promotional offerings, offered by incumbent local exchange companies (ILECs) regulated under Public Utility Regulatory Act (PURA) Chapter 52. Project Number 21159 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rules created in this project at two workshops convened on November 15, 1999, and March 28, 2000. Commission staff coordinated the product of Project Number 21159 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packing Flexibility, and Promotional Offerings;* Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps, and Rate Adjustments;* Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provision of New Services;* and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59.*

Ms. Anne McKibbin, Senior Economist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McKibbin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be the clarification of the substantive requirements and procedures relating to the offering of new services and pricing and packaging flexibility, including customer promotional offerings and the filing of LRIC studies by Chapter 52 and 59 companies. There will be no effect on small businesses or micro-businesses resulting from the enforcement of this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to Anne.McKibbin@puc.state.tx.us, if possible. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. The commission also invites comments on whether it is appropriate that proposed subsections (c)(1)(D) and (d)(2)(D) contain an anti-competitive pricing standard, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21159 and Proposed Rule §26.228.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 §52.0583, regarding new services for non-electing companies; §52.0584, regarding pricing and packagng flexibility requirements for non-electing companies; and §52.0585, regarding customer promotional offering requirements for non-electing companies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.0583, 52.0584, and 52.0585.

§26.228. Requirements Applicable to Chapter 52 Companies.

(a) Application. This provision applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), which have not elected to be regulated pursuant to PURA Chapters 58 and 59.

(b) Purpose. This section establishes the substantive and procedural requirements for a Chapter 52 ILEC to introduce new services and to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.

(c) New services. The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An ILEC may file an informational notice to introduce a new service. An ILEC filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.

(1) Pricing standards.

(A) An ILEC shall price each new service at or above the service's long run incremental cost (LRIC).

(B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) There is a rebuttable presumption that the price of a new service is anticompetitive against a competitor if an ILEC's retail price for a new service is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the new service.

(2) LRIC studies. An ILEC may establish a service's LRIC by submitting a LRIC cost study, as specified in subsection (g)(2)(D)(ix), that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for

Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).

(3) LRIC adoption. An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.

(4) Rate adoption. In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(5) Packaging of new services. If an ILEC offers a new service as a component of a package, the ILEC shall also offer the new service as a separately tariffed service.

(d) Pricing and packaging flexibility. An ILEC may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) General requirements.

(A) Pricing flexibility includes:

(i) customer specific contracts;

(ii) packaging of services;

(iii) volume, term, and discount pricing;

(iv) zone density pricing, with a zone defined as an exchange; and

(v) other promotional pricing.

(B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) An ILEC may exercise pricing flexibility, including the packaging of any regulated services with any other regulated or unregulated services or any service of an affiliate.

(2) Pricing standards.

(A) An ILEC shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.

(B) An ILEC shall price each service at or above the service's LRIC.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) There is a rebuttable presumption that the price of the service or package is anti-competitive against a competitor if an ILEC's retail price for the service or package of services is less than the sum of the TELRIC-based wholesale prices of components needed to provide the service or package of services, respectively.

(E) The price of a package of services that includes unregulated products or services or an affiliate's products or services shall recover the cost, to the ILEC, of acquiring and providing the unregulated products or services or the affiliate's products or services.

(3) LRIC studies. An ILEC may establish a service's LRIC by submitting a LRIC cost study, as specified in subsection (g)(2)(D)(ix), that conforms to the requirements of §26.214 of this title.

(4) LRIC adoption. An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

(5) Rate adoption. In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(e) Customer promotional offerings. An ILEC may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) An ILEC may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(2) Customer promotional offerings may consist of:

(A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.

(3) Although ILECs are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) Requirements for customer specific contracts. An ILEC may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an ILEC must offer customer-specific contracts pursuant to this section.

(g) Procedures related to the filing of informational notices and associated tariffs. The provisions of this subsection apply to ILECs choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) Notice requirements. An ILEC shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPUC), and to any person who holds a certificate of operating authority in the ILEC's certificated area or areas, or who has an effective interconnection agreement with the ILEC.

(2) Filing requirements:

(A) At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to both OPUC and the commission's Director - Policy Analysis, Telecommunications Industry Analysis Division.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) Staff of the commission's Office of Regulatory Affairs (ORA) shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of ORA's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the ILEC files a complete informational notice with the commission.

(C) Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);

(ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study pursuant to §26.214 of this title to establish a LRIC floor shall be filed before or simultaneously with the informational notice filing. The ILEC shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the informational notice filing.

(x) Except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an ILEC chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable.

(xi) Except for customer promotional offerings, relevant tariff rates or specific tariff references, if the ILEC chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable.

(xii) A response of "yes", "no", or "not applicable", with explanatory language, to the following question: "Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" Except for customer promotional offerings, if the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) A response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274(f)-(h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the ILEC is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the ILEC's provisioning of the service to the ILEC's customers;

(xiv) For package offerings that include any un-regulated product or service or an affiliate's product or service, an affidavit indicating that the price of the package recovers the cost, to the ILEC, of offering the unregulated product or service or an affiliate's product or service.

(xv) description of offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) Disputes as to sufficiency or appropriateness of informational notice filing.

(A) If the ILEC advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than ORA may not challenge the sufficiency of an informational notice filing.

(4) Complaints regarding service offerings introduced by informational notice filings.

(A) Subject to subparagraph (E) of this paragraph, an affected person, the OPUC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will be considered to initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.

(C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the ILEC shall either:

(i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(ii) discontinue the service.

(D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.

(F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).

(G) The commission's Office of Regulatory Affairs shall have standing in all proceedings related to informational notice filings before the commission and need not file a motion to intervene.

(H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).

(5) Interim relief. A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(i) the pleading must state an appropriate and bona fide cause of action;

(ii) the pleading must be verified or supported with affidavits based on personal knowledge; and

(iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

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 May 4, 2000.

TRD-200003133
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

16 TAC §26.229

The Public Utility Commission of Texas (commission) proposes new §26.229, relating to Requirements Applicable to Chapter 59 Electing Companies.

Proposed new §26.229 clarifies the substantive and procedural requirements relating to new services and packaging and pricing flexibility, including customer promotional offerings, offered by incumbent local exchange companies (ILECs) regulated under the Public Utility Regulatory Act (PURA) Chapter 59. Project Number 21159 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rules created in this project at two workshops convened on November 15, 1999, and March 28, 2000. Commission staff coordinated the product of Project Number 21159 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packing Flexibility, and Promotional Offerings;* Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps, and Rate Adjustments;* Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provision of New Services;* and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59.*

Ms. Anne McKibbin, Senior Economist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McKibbin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be the clarification of the substantive requirements and procedures relating to the offering of new services and pricing and packaging flexibility, including customer promotional offerings and the filing of long run incremental cost (LRIC) studies by Chapter 52 and 59 companies. There will be no effect on small businesses or micro-businesses resulting from the enforcement of this section. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 in the Commissioners Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to Anne.McKibbin@puc.state.tx.us, if possible. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. The commission also invites comments on whether it is appropriate that proposed subsection (c)(1)(D) and (d)(2)(D) contain an anti-competitive pricing standard, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21159 and Proposed Rule §26.229.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 §59.030, regarding new services for Chapter 59 electing companies; §59.031, regarding pricing and packaging flexibility for Chapter 59 electing companies; and §59.032, regarding customer promotional offering requirements for Chapter 59 electing companies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 59.030, 59.031, and 59.032.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

(a) Application. This provision applies to electing companies as defined in the Public Utility Regulatory Act (PURA) §59.002(1).

(b) Purpose. This section establishes the substantive and procedural requirements for a Chapter 59 electing company to introduce new services and to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.

(c) New services. The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An electing company may file an informational notice to introduce a new service. An electing company filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.

(1) Pricing standards.

(A) An electing company shall price each new service at or above the service's long run incremental cost (LRIC).

(B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) There is a rebuttable presumption that the price of a new service is anticompetitive against a competitor if an electing company's retail price for a new service is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the new service.

(2) LRIC studies. An electing company may establish a service's LRIC by submitting a LRIC cost study, as specified in subsection (g)(2)(D)(ix) that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).

(3) LRIC adoption. An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.

(4) Rate adoption. In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(5) Packaging of new services. If an electing company offers a new service as a component of a package, the electing company shall also offer the new service as a separately tariffed service.

(d) Pricing and packaging flexibility. An electing company may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) General requirements.

(A) Pricing flexibility includes:

(i) customer specific contracts;

(ii) packaging of services;

(iii) volume, term, and discount pricing;

(iv) zone density pricing, with a zone defined as an exchange; and

(v) other promotional pricing.

(B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) An electing company may exercise pricing flexibility, including the packaging of any regulated services with any other regulated or unregulated services or any service of an affiliate.

(2) Pricing standards.

(A) An electing company shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.

(B) An electing company shall price each service at or above the service's LRIC.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) There is a rebuttable presumption that the price of the service or package is anticompetitive against a competitor if an electing company's retail price for the service or package of services is less than the sum of the TELRIC-based wholesale prices of components needed to provide the service or package of services, respectively.

(E) The price of a package of services that includes unregulated products or services or an affiliate's products or services shall recover the cost, to the electing company, of acquiring and

providing the unregulated products or services or the affiliate's products or services.

(3) LRIC studies. An electing company may establish a service's LRIC by submitting a LRIC cost study, as specified in subsection (g)(2)(D)(ix) that conforms to the requirements of §26.214 of this title.

(4) LRIC adoption. An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

(5) Rate adoption. In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(e) Customer promotional offerings. An electing company may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(2) Customer promotional offerings may consist of:

(A) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.

(3) Although electing companies are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) Requirements for customer specific contracts. An electing company may enter into customer-specific contracts for certain services as provided in §26.211 of this title, (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an electing company must offer customer-specific contracts pursuant to this section.

(g) Procedures related to the filing of informational notices and associated tariffs. The provisions of this subsection apply to electing companies choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) Notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPUC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(2) Filing requirements:

(A) At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to both OPUC and the commission's Director - Policy Analysis, Telecommunications Industry Analysis Division.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) Staff of the commission's Office of Regulatory Affairs (ORA) shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of ORA's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to OPUC, certificate of operating authority holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);

(ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study pursuant to §26.214 of this title to establish a LRIC floor shall be filed before or simultaneously with the informational notice filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the informational notice filing.

(x) Except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an electing company chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable.

(xi) Except for customer promotional offerings, relevant tariff rates or specific tariff references, if the electing company chooses to adopt rates of a larger company pursuant

to requirements of subsection (c)(4) or (d)(5) of this section, as applicable.

(xii) A response of "yes", "no", or "not applicable", with explanatory language, to the following question: "Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" Except for customer promotional offerings, if the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) A response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274(f) - (h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;

(xiv) For package offerings that include any unregulated product or service or an affiliate's product or service, an affidavit indicating that the price of the package recovers the cost, to the electing company, of offering the unregulated product or service or an affiliate's product or service.

(xv) description of offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) Disputes as to sufficiency or appropriateness of informational notice filing.

(A) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than ORA may not challenge the sufficiency of an informational notice filing.

(4) Complaints regarding service offerings introduced by informational notice filings.

(A) Subject to subparagraph (E) of this paragraph, an affected person, OPUC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will be considered to initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and commission substantive rules.

(C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the electing company shall either:

(i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(ii) discontinue the service.

(D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.

(F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).

(G) The commission's Office of Regulatory Affairs shall have standing in all proceedings related to informational notice filings before the commission and need not file a motion to intervene.

(H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242 (c) of this title (relating to Complaints).

(5) Interim relief. A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(i) the pleading must state an appropriate and bona fide cause of action;

(ii) the pleading must be verified or supported with affidavits based on personal knowledge; and

(iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

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 May 4, 2000.

TRD-200003134
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

Chapter 361. ADMINISTRATION

Subchapter A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners proposes amendments to §361.1. This section specifies the meanings of words and terms used in the Plumbing License Law and Board Rules. The proposed amendments to §361.1 are for the purpose of clarity and in no way will effect change in the method that the Board currently conducts business, carries out or enforces the Plumbing License Law and Board Rules.

None of the proposed amendments to §361.1 will change the current requirements of the Board Rules.

Section 361.1(26), proposes a definition of "Plumbing Inspection" as described in and required by §15(a) of the Act.

Section 361.1(27) adds language to the existing definition of "Plumbing Inspector" that clarifies that only a Licensed Plumbing Inspector is authorized to perform a plumbing inspection as defined in §361.1(26).

Section 361.1(28) adds language to the existing definition of "Pocket Card" that clarifies that it is a card issued by the Board which certifies that the holder has a Master Plumber License, Journeyman Plumber License, or Plumbing Inspector License.

Doretta A. Conrad, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local government as a result of enforcing the rule amendments as proposed.

Ms. Conrad has determined that each year of the first five years the rule is in effect the public benefit will be greater protection of public health and safety through better clarity and understanding of the meanings of words and terms used in the Plumbing License Law and Board Rules. There will be no economic cost to the persons that will be required to comply with the rule.

Comments on the proposed rule change may be submitted within 30 days of publication of this proposed rule in the *Texas Register*, to Doretta A. Conrad, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas, 78765-4200.

The amendments to §361.1 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §2(5), §5(a), §14(a), §15(a) (Vernon Supp. 2000) and the rule it amends. Section 2(5) of the Act defines "Plumbing Inspector". Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 14(a) prohibits any individual from serving as a Plumbing Inspector unless the individual is a holder of a valid Plumbing Inspector License, unless the person is otherwise exempted by the Act. Section 15(a) requires that all cities in this state shall provide for plumbing inspections.

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

§361.1. Definitions.

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

(1)-(25) (No change.)

(26) Plumbing Inspection–Any of the inspections required in §15(a) of the Act, including any check of pipes, faucets, tanks, plumbing fixtures and appliances by and through which a supply of water, gas or sewage is used or carried that is performed on behalf of any city or municipality of more than five thousand (5,000) inhabitants to ensure compliance with the municipality's adopted plumbing and gas codes and ordinances regulating plumbing.

(27) [~~(26)~~] Plumbing Inspector–An individual with no financial or advisory interests in any plumbing company who: is authorized by the Act and Board Rules to conduct plumbing inspections and is employed by or is an agent of a political subdivision to check plumbing work for compliance with health and safety laws and ordinances; and has successfully completed the examinations and met the Board's requirements for Plumbing Inspector status.

(28) [~~(27)~~] Pocket Card–A card issued by the Board which certifies that the holder has a Master Plumber License, Journeyman Plumber License, or Plumbing Inspector License [~~plumbing license~~].

(29) [~~(28)~~] Registered Plumbing Apprentice–An individual other than a master plumber or journeyman plumber whose principal occupation is learning about and assisting in the installation of plumbing. The work that may be performed by a Registered Plumbing Apprentice is limited by the Act and these rules (See §365.2 and §367.3 of this title relating to Apprentice Registration and Requirements for Plumbing Companies).

(30) [~~(29)~~] Regularly Employed–Steadily, uniformly, or habitually working in an employer-employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.

(31) [~~(30)~~] Respondent–A person charged in a complaint filed with the Board.

(32) [~~(31)~~] Responsible Master Plumber–A responsible master plumber is the master that allows his Master Plumber License to be used by a company for the purpose of performing plumbing work and obtaining the required plumbing permits. The master plumber by allowing his license to be used in this manner, assumes responsibility for all plumbing work performed. A Responsible Master Plumber may allow his master plumber license to be used by only one plumbing company.

(33) [~~(32)~~] Rule–An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(34) [~~(33)~~] System–An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(35) [~~(34)~~] Water Supply Protection Specialist–A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board.

(36) [~~(35)~~] Water Treatment–A business conducted under contract to analyze, then alter or purify influent or effluent water by adding or removing a mineral, chemical, or bacterial content or substance. The term includes the installation, exchange, servicing, or repair of fixed or portable water treatment equipment or connections necessary to the installation of such equipment in public or private water treatment systems.

(37) [~~(36)~~] Water Treatment Certificate–A document issued by the Texas Natural Resource Conservation Commission certifying that the named person complies with department rules for engaging in water treatment.

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

Filed with the Office of the Secretary of State, on May 2, 2000.

TRD-200003092
Robert L. Maxwell
Chief Investigator/Field Services
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 458-2145

♦ ♦ ♦

Chapter 367. ENFORCEMENT

22 TAC §367.7

The Texas State Board of Plumbing Examiners proposes amendments to §367.7. This section identifies certain violations of the Act and Board Rules and sets forth certain penalties for the violations. The proposed amendments to §367.7 deletes language that does not reflect the requirements of the Act and clarifies that acting, serving, or representing oneself as a Plumbing Inspector, or conducting plumbing inspections as defined in the Act and Board Rules without holding a valid Plumbing Inspector License and without being employed by, or an agent of a political subdivision is a violation of the Act and Board Rules.

Doretta A. Conrad, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local government as a result of the rule amendments as proposed.

Ms. Conrad has determined that each year of the first five years the rule is in effect the public benefit will be increased health and safety by clarifying that only a qualified Licensed Plumbing Inspector may represent himself or herself as such and perform the plumbing inspections required to ensure that plumbing systems are installed in accordance with the required health and safety laws and ordinances. There will be no economic cost to the persons that will be required to comply with the rule.

Comments on the proposed rule change may be submitted within 30 days of publication of this proposed rule amendment in the *Texas Register*, to Doretta A. Conrad, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas, 78765-4200.

The amendments to §367.7 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §2 (5), §5(a), §9(e), §14(a), §15(a) (Vernon Supp. 2000) and the rule it amends. Section 2(5) of the Act defines "Plumbing Inspector". Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 9(e) provides for penalties for persons that violate the license requirements of the Act. Section 14(a) prohibits any individual from serving as a Plumbing Inspector unless the individual is a holder of a valid Plumbing Inspector License, unless the person is otherwise exempted by the Act. Section 15(a) requires that all cities in this state shall provide for plumbing inspections.

No other statute, article, or code is affected by this proposed rule change.

§367.7. Violations of Standards and Practices.

(a) (No change.)

(b) A person commits a Class C misdemeanor by [~~knowingly and willfully~~]:

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

(5) Acting, serving, or representing oneself as a Plumbing Inspector, or conducting plumbing inspections as defined in the Act and Board Rules without holding a valid Plumbing Inspector License and without being employed by, or an agent of a political subdivision.

(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 May 2, 2000.

TRD-200003093
Robert L. Maxwell
Chief Investigator/Field Services
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 458-2145

♦ ♦ ♦

Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) proposes an amendment to §535.51, concerning general requirements for licensure. The amendment would require a person to obtain an evaluation from TREC of the education completed by the person prior to filing an application for a real estate broker or real estate salesperson license. The amendment also would adopt by reference two application forms which would be revised to reflect the change in filing procedures.

Under the current section, an applicant may submit course completion documents or a transcript along with an application for a license. An evaluation of the education is performed to determine if the application may be accepted. Applicants for an original license pay a statutory fee of $15 for the evaluation as part of the filing fees for the application. If the person has not completed the courses required for a license, the application and filing fees are returned to the applicant. The amendment would require the person to obtain an evaluation from the commission prior to filing the license application. This action would reduce the number of applications which cannot be accepted for processing and thereby streamline the overall processing of applications. Because it is necessary for TREC to examine the course completion documents or transcripts to determine if the required courses have been taken, the amendment also would require a person filing an application electronically on the TREC Internet web site to first obtain an education evaluation before filing the application.

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

Mr. Moseley 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 a streamlined application filing process. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

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

§535.51. General Requirements.

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the commission for that purpose. Prior to filing the application, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license.

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(c) [~~(b)~~] The commission shall return applications to applicants or the sponsoring broker (in the case of an application for an active salesperson license) when it has been determined that the application fails to comply with one of the following requirements.

(1) The applicant is not 18 years of age.

(2) The applicant does not meet any applicable residency requirement.

(3) An incorrect filing fee or no filing fee is received.

(4) The application is submitted in pencil.

(5) The applicant is not a citizen of the United States or a lawfully admitted alien.

(6) The applicant has not obtained an evaluation from the commission showing the applicant meets education requirements or [~~education or~~] experience requirements have not been satisfied.

(d) [~~(c)~~] An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy an examination requirement within six months from the date the application is filed;

(2) the applicant, having satisfied any examination requirement, fails to submit a required fee within sixty (60) days after the commission makes written request for payment;

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

(e) [~~(d)~~] The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a Real Estate Broker License, TREC Form BL-6 [~~BL-5~~] ;

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-3;

(3) Application for Late Renewal of A Real Estate Broker License, TREC Form BLR-5;

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form BLRC-3

(5) Application for Real Estate Salesperson License, TREC Form SL-6 [~~SL-5~~];

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-5;

(7) Application for Moral Character Determination, TREC Form MCD-2;

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-2;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-2; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-1.

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

Filed with the Office of the Secretary of State, on May 8, 2000.

TRD-200003208
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 465-3900

♦ ♦ ♦

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

Chapter 651. FEES

22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.2, Physical Therapy Board Fees.

The amendment will add late/restoration fees for licensees and facilities as already set out in the PT Board rules, and establish that the licensee must pay the existing inactive/active fee to go inactive rather than to return to active status.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be better access to the fee 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 proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; email: jennifer.jones@mail.capnet.state.tx.us.

The amendment is proposed under Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

§651.2. Physical Therapy Board Fees.

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

(c) License.

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

(3) Active to Inactive [~~Inactive to Active Status~~].

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

(d) (No change.)

(e) Late Renewal/Restoration Fees

(1) Late 90 days or less–a fee equal to one-half of the renewal fee.

(2) Late more than 90 days but less than one year–a fee equal to the renewal fee.

(3) Expired more than one year, but currently licensed in another state–a fee equal to the renewal fee plus the renewal fee for the current renewal period.

(f) [~~(e)~~] Registration of Facilities.

(1) First facility–$300.

(2) Additional site–$100.

(g) [~~(f)~~] Renewal of Facility Registration.

(1) First facility–$300.

(2) Additional site–$100.

(h) Facility Late Renewal/Restoration Fees

(1) First Facility

(A) Late 90 days or less–renewal fee plus a restoration fee equal to one-half of the renewal fee.

(B) Late more than 90 days but less than one year–renewal fee plus a restoration fee equal to the renewal fee.

(C) Late one year or more–renewal fee plus a restoration fee equal to the renewal fee.

(2) Additional Site

(A) Late 90 days or less–renewal fee plus a restoration fee equal to one-half of the renewal fee.

(B) Late more than 90 days but less than one year–renewal fee plus a restoration fee equal to the renewal fee.

(C) Late one year or more–renewal fee plus a restoration fee equal to the renewal fee.

[~~(g) Approval of Continuing Education Program for CEU Credit–$40 per program.~~]

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

Filed with the Office of the Secretary of State, on May 5, 2000.

TRD-200003169
John P. Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-6969

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 313. ATHLETIC TRAINERS

Subchapter A. GENERAL GUIDELINES AND REQUIREMENTS

The Advisory Board of Athletic Trainers (board) proposes the repeal of §§313.1 - 313.20 and new §§313.1 - 313.17 concerning the regulation and licensure of athletic trainers.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, 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). The Advisory Board of Athletic Trainers has reviewed Chapter 313 in its entirety and the board has determined that all sections of the chapter should be repealed and new sections proposed. The review revealed that the sections need reorganization and renumbering, have obsolete rules, have rules that do not reflect current board procedures, and have rules that do not reflect current legal and policy considerations.

Additionally, new rules are required by House Bill (HB) 2085 (relating to the continuation and functions of the Texas Department of Health, including the operation of certain boards and councils administratively attached to the department), HB 2824 (relating to confidentiality of records and subpoena authority), Senate Bill (SB) 1233 (relating to the regulation of athletic trainers), and HB 3155 (relating to a nonsubstantive revision of provisions of the existing statutes applicable to the licensing and regulation of certain professionals and business practices) passed by the 76th Legislature. The new rules required by these bills are proposed for adoption in conjunction with the new sections proposed under the rule review.

The board published a Notice of Intention to Review the sections as required by Rider 167 in the *Texas Register* on August 20, 1999, (24 TexReg 6527). No comments were received by the board in response to the notice.

Each section was edited and restructured to correct grammatical errors; eliminate catch titles; update legal citations in accordance with HB 3155; and delete repetitive, ambiguous, obsolete, unenforceable, and unnecessary language. Each section was edited in an effort to improve draftsmanship and make the rules more accessible, understandable, and usable.

New §313.1 (relating to Definitions) is proposed to number each definition, include clarifying introductory language, and include definitions of "ALJ" and "SOAH" in accordance with HB 2085.

New §313.2 (relating to Scope of Practice) is proposed to amend language to conform with the definition of "athletic training" and replace the phrase "team physician" with "physician" in accordance with SB 1233.

New §313.3 (relating to The Board's Operation) is proposed to change the name of a committee, include language relating to the appointment of the board chair in accordance with HB 2085, and provide for a board member attendance policy.

New §313.4 (relating to Petition for Rulemaking) is language that was formerly included within an unrelated section.

New §313.5 (relating to Processing Applications) is proposed to reassign procedural responsibilities relating to reimbursement and appeal.

New §313.6 (relating to Fees) is proposed to include language relating to time periods for late renewals in accordance with HB 2085, to calculate late renewal fees in accordance with HB 2085, and to increase certain fees: the written examination fee from $50 to $75, the oral/practical examination fee from $50 to $125, the temporary license fee from $100 to $200, and the renewal fee from $75 to $125. Late renewal fees, which are calculated based on the renewal fee and the length of time between license expiration and late renewal, will increase as a result of the renewal fee increase. The fee increases are necessary to over the cost of operating the licensing program.

New §313.7 (relating to Qualifications) is proposed to add clarifying language regarding the apprenticeship required for applicants who hold physical therapy or corrective therapy degrees. The proposed section provides for flexibility in these apprenticeship programs by deleting the requirement that the applicant must be enrolled at the same college or university where the applicant is completing the apprenticeship hours and by allowing 240 of the 720 clock hours of the apprenticeship to be earned at affiliated settings.

New §313.8 (relating to Student Athletic Trainer Activities) is proposed to rename the section and include a definition of "supervision" for the purposes of the section.

New §313.9 (relating to Examination for Licensure) is proposed to include clarifying language regarding the time frame that applicants who hold physical therapy degrees may apply for examination, to clarify procedural requirements for examination applications, and include language regarding withdrawing examination approval.

New §313.10 (relating to Temporary License) is proposed to renumber the section.

New §313.11 (relating to License Renewal) is proposed to delete obsolete language, clarify late renewal procedures in accordance with HB 2085, include language regarding protected titles and abbreviations in accordance with SB 1233, and include language regarding license renewal by active duty military personnel that was formerly included within an unrelated section.

New §313.12 (relating to Continuing Education Requirements) is proposed to delete the option of exemption from continuing education requirements for licensees over the age of 55, delete the requirement that a continuing education extension request must be made prior to license expiration, extend the continuing education extension period to six months, and delete the provision that continuing education activities completed more than once per reporting period are disallowed.

New §313.13 (relating to Guidelines for Conduct) is proposed to include clarifying language prohibiting sexual misconduct by licensees, include language regarding protected titles and abbreviations in accordance with SB 1233, include language regarding changes of name and address that was formerly included within an unrelated section, and clarify billing prohibitions.

New §313.14 (relating to Violations, Complaints, and Disciplinary Actions) is proposed to include language regarding the board's subpoena authority in accordance with HB 2824, clarify responsibilities of the administrator and the executive secretary, include language relating to the responsibility of the executive secretary to consult with the executive secretary emeritus and the associate executive secretary regarding disciplinary actions, include language regarding probation, reprimand, and administrative penalties in accordance with HB 2085, and include language regarding procedures for informal disposition of complaints.

New §313.15 (relating to Licensing of Persons with Criminal Backgrounds to be Athletic Trainers) is proposed to include language regarding probation, reprimand, and administrative penalties in accordance with HB 2085.

New §313.16 (relating to Formal Hearings) is proposed to replace references to "hearing examiner" with "ALJ".

New §313.17 (relating to Suspension of License for Failure to Pay Child Support) is proposed to renumber the section.

Stephen Mills, Program Administrator, has determined that for each year of the first five years the sections are in effect, there will be fiscal implication to state government as a result of enforcing or administering the sections as proposed. An estimated increase in revenue of $20,000 is expected due to the proposal to increase examination fees. Approximately 200 applicants per year will be required to submit the examination fee which is proposed for increase from $50 to $75 for the written licensure examination and from $50 to $125 for the oral/practical licensure examination. An estimated increase in revenue of $7,000 is expected due to the proposal to increase temporary license fees. Approximately 70 applicants per year will be required to submit the temporary license fee which is proposed for increase from $100 to $200. An estimated increase in revenue of $75,000 is expected due to the proposal to increase renewal fees. Approximately 1500 licensees per year will be required to submit the renewal fee which is proposed for increase from $75 to $125. Therefore, an estimated increase in total revenue of $102,000 is expected due to the proposal to increase fees. There will be no fiscal implication for local governments.

Mr. Mills has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the sections will be to assure that the regulation of athletic trainers continues to identify competent providers. There will be no effect on small businesses and micro-businesses because those businesses are not required to comply with the sections. The sections relate only to the occupational regulation of athletic trainers. There will be anticipated economic costs to persons who are required to comply with the sections as proposed. Each applicant approved for the licensure examinations is required to submit examination fees in the amount of $100. Under the proposed sections, these applicants will be required to submit examination fees in the amount of $200. Each applicant approved for a temporary license is required to submit a temporary license fee in the amount of $100. Under the proposed sections, these applicants will be required to submit a temporary license fee in the amount of $200. Each licensed athletic trainer is required to submit a renewal fee in the amount of $75. Under the proposed sections, licensed athletic trainers will be required to submit a renewal fee in the amount of $125. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Stephen Mills, Program Administrator, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

25 TAC §§313.1 - 313.20

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

The repeals are proposed under the Occupations Code, §451.103, which provides the board with the authority to adopt rules necessary for the performance of its duties.

The repeals affect the Occupations Code, Title 3, Subtitle H, Chapter 451; Texas Civil Statutes, Article 4512d; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§313.1. Definitions.

§313.2. The Board's Operation.

§313.3. Fees.

§313.4. Application Requirements and Procedures.

§313.5. Qualifications.

§313.6. Student Trainer Activities.

§313.7. Examination for Licensure.

§313.8. Determination of Eligibility for Licensure.

§313.9. Temporary License.

§313.10. Licensing.

§313.11. Changes of Name or Address.

§313.12. License Renewal.

§313.13. Continuing Education Requirements.

§313.14. Licensing of Persons with Criminal Backgrounds To Be Athletic Trainers.

§313.15. Guidelines for Conduct.

§313.16. Violations, Complaints, and Disciplinary Actions.

§313.17. Formal Hearings.

§313.18. Processing Applications.

§313.19. Suspension of License for Failure To Pay Child Support.

§313.20. Scope of Practice.

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 May 5, 2000.

TRD-200003173
Natalie Steadman
Chair
Texas Department of Health
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §§313.1 - 313.17

The new sections are proposed under the Occupations Code, §451.103, which provides the board with the authority to adopt rules necessary for the performance of its duties.

The new sections affect the Occupations Code, Title 3, Subtitle H, Chapter 451; Texas Civil Statutes, Article 4512d; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§313.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words and terms defined in the Act shall have the same meaning in this chapter that they are assigned in the Act.

(1) Act - Occupations Code, Chapter 451 and Texas Civil Statutes, Article 4512d, relating to the Advisory Board of Athletic Trainers.

(2) Administrator - The department employee designated as the coordinator of the licensure activities authorized by the Act.

(3) Applicant - A person who applies to the board for a license or temporary license.

(4) ALJ - An administrative law judge appointed by the State Office of Administrative Hearings to preside over contested case hearings.

(5) APA - The Administrative Procedure Act, Government Code, Chapter 2001.

(6) Associate executive secretary - A licensed athletic trainer employed by the board as the associate director of board licensing activities and who serves at the direction of the board.

(7) Athletic trainer - A person licensed under the Act.

(8) Board - The Advisory Board of Athletic Trainers.

(9) Department - The Texas Department of Health.

(10) Executive secretary - A licensed athletic trainer employed by the board as the director of board licensing activities and who serves at the direction of the board.

(11) Executive secretary emeritus - A licensed athletic trainer who has been previously employed by the board as the director of board licensing activities and who currently serves at the direction of the board and provides guidance to the Administrative Services Committee.

(12) Licensee - A person who holds a current license or a temporary license as an athletic trainer issued by the board under the Act.

(13) SOAH - The State Office of Administrative Hearings.

(14) Temporary license - A license issued under §313.10 of this title (relating to Temporary License).

§313.2. Scope of Practice.

(a) A licensed athletic trainer prevents, recognizes, assesses, manages, treats, disposes of, and reconditions athletic injuries and illnesses. An athlete is a person who participates in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intramural, semiprofessional, and professional sports activities.

(b) The activities listed in subsection (c)(1) - (7) of this section may be performed in any setting authorized by a licensed physician and may include, but not be limited to, an educational institution, professional or amateur athletic organization, an athletic facility, or a health care facility.

(c) Services provided by a licensed athletic trainer may include, but are not limited to:

(1) planning and implementing a comprehensive athletic injury and illness prevention program;

(2) conducting an initial assessment of an athlete's injury or illness and formulating an impression of the injury or illness in order to provide emergency or continued care and referral to a physician for definitive diagnosis and treatment, if appropriate;

(3) administering first aid and emergency care for acute athletic injuries and illnesses;

(4) coordinating, planning, and implementing a comprehensive rehabilitation program for athletic injuries;

(5) coordinating, planning, and supervising all administrative components of an athletic training or sports medicine program;

(6) providing health care information and counseling athletes; and

(7) conducting research and providing instruction on subject matter related to athletic training or sports medicine.

(d) A licensee shall not provide health care services which are not within the definition of "athletic training" in the Act except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157, relating to a physician's delegated authority; other licensure laws; and laws relating to the possession and distribution of controlled substances.

§313.3. The Board's Operation.

(a) The chairman is appointed by and serves at the will of the governor.

(b) The chairman shall preside at all board meetings at which he or she is in attendance and perform all duties prescribed by the Act and this chapter. The chairman may serve as an ex-officio member of any committee.

(c) The vice-chairman shall perform the duties of chairman in case of the absence of the chairman. In case the office of chairman becomes vacant, the vice-chairman will serve until a successor is appointed.

(d) At the meeting held nearest to August 31 of each year, the board shall elect by a majority vote of those members present and voting, a vice-chairman and secretary. Nominations shall be from the floor.

(e) A vacancy which occurs in the offices of vice-chairman or secretary may be filled by a majority vote of those members present and voting at the next board meeting.

(f) The board or the chairman with the approval of the board may establish committees necessary to assist the board in carrying out its duties and responsibilities.

(1) The chairman may appoint the members of the board to serve on committees and may designate the committee chairman.

(2) The chairman may appoint non-board members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(3) Committee chairmen shall make regular reports to the board by interim written reports and/or at regular meetings, as necessary.

(4) Committees shall meet when called by the chairman of the committee or when so directed by the board.

(5) The following standing committees shall be appointed by the chairman each year to serve a term of one year:

(A) the Administrative Services Committee;

(B) the Continuing Education Committee;

(C) the Examination Committee;

(D) the Governmental Affairs Committee; and

(E) the Communications Committee.

(g) The board shall hold at least two regular meetings during each year ending on August 31 at such date, place, and time as may be determined by the chairman.

(1) The board may hold additional meetings necessary for the transaction of board business on the call of the chairman or at the written request of any three members of the board.

(2) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Government Code, Chapter 551.

(3) A quorum of the board necessary to conduct official business is four members.

(h) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(i) Board action shall require a majority vote of those members present and voting.

(j) The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(k) Policy against discrimination. The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(l) The policy of the board is that members shall attend regular and committee meetings.

(1) It is a ground for removal from the board if a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(2) The board may report to the governor and the Texas Sunset Advisory Commission the attendance records of members.

(m) A board member is entitled to receive the state per diem allowance as set by the legislature in the General Appropriations Act for transportation and related expenses incurred for each day the member engages in the business of the board.

(1) Payment to board members of per diem and transportation expenses shall be on official state travel vouchers which have been approved by the department.

(2) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(n) The administrator shall prepare and submit to each member of the board, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business which have been approved for discussion by the chairman.

(o) The official agenda of a meeting shall be filed with the Office of the Secretary of State of the State of Texas in accordance with the Open Meetings Act, Government Code, Chapter 551.

(p) The drafts of the minutes of each meeting shall be forwarded to each board member for review and comments prior to approval by the board.

(1) After approval by the board, the minutes of any board meeting are official only when affixed with the original signatures of the chairman and secretary.

(2) The official minutes of board meetings shall be kept in the office of the administrator and shall be available to any person desiring to examine them during regular office hours.

(q) All public records of the board shall be open for inspection during regular office hours unless such records contain information excepted from disclosure under the Public Information Act, Government Code, Chapter 552; the Family Educational Rights and Privacy Act of 1974, 20 United States Code, §1232g; or other applicable law.

(1) A person desiring to examine public records shall be required to identify himself or herself and sign a statement listing the records requested and examined.

(2) Public records may not be taken from board offices; however, persons may obtain photocopies upon request and by paying the cost per page set by the department.

§313.4. Petition for Rulemaking.

(a) Any person may petition the board to adopt a rule.

(b) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it. If the executive secretary determines that further information is necessary to assist the board in reaching a decision, the executive secretary may require that the petitioner resubmit the petition and that it contain:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is to be promulgated; and

(4) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which would result from the failure to adopt the proposed rule.

(c) The board may deny a petition which does not contain the information in subsection (b) of this section or the information in subsection (b)(1) - (4) of this section if the executive secretary determines that the latter is necessary.

(d) The petition shall be mailed or delivered to the executive secretary, Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183.

(e) The executive secretary shall submit a completed petition to the board for its consideration.

(f) Within 60 days after receipt of the petition by the executive secretary, or within 60 days after receipt of a resubmitted petition in accordance with subsection (b)(1)- (4) of this section, the board shall either deny the petition or initiate rule-making procedures.

(g) The board may deny parts of the petition and/or initiate rule-making procedures on parts of the petition.

(h) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(i) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(j) The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§313.5. Processing Applications.

(a) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a completed application. The time periods are as follows:

(1) letter of acceptance of application for licensure or temporary licensure - 30 working days;

(2) letter of application or renewal deficiency - 30 working days; and

(3) issuance of license renewal after receipt of documentation of all renewal requirements - 20 working days.

(b) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(1) letter of approval for examination - 30 working days;

(2) initial letter of approval for licensure - 30 working days;

(3) letter of denial of licensure - 180 working days; and

(4) issuance of license renewal after receipt of documentation of all renewal requirements - 20 working days.

(c) In the event an application is not processed in the time periods stated in subsections (a)- (b) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(d) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15 percent or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(e) Appeal. If a request for reimbursement under subsection (c) of this section is denied by the administrator, the applicant may appeal to the chairman of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairman at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The administrator shall provide written notice of the chairman's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(f) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in subsections (a)-(b) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable.

§313.6. Fees.

(a) The schedule of fees of the board is as follows:

(1) application fee - $60;

(2) temporary license fee - $200;

(3) written examination fee - $75;

(4) oral/practical examination fee - $125;

(5) initial license fee - $50;

(6) child support reinstatement fee - $75;

(7) returned check fee - $25;

(8) renewal fee - $125; and

(9) late renewal fee:

(A) $187.50 when renewed on or within 90 days of expiration;

(B) $250 when renewed later than 90 days, but less than one year after expiration; or

(C) for an expired license renewed on or before August 31, 2000, $250 when renewed at least one year but less than two years after expiration.

(b) All fees are nonrefundable.

(c) A licensee or applicant whose personal check for a fee is not honored by the financial institution may reinstate the renewal application, initial application, or examination eligibility by remitting to the department a money order or cashier's check for the amount of the fee plus the returned check fee within 30 days of the date of the person's receipt of the department's notice that the personal check was not honored.

(1) An initial or renewal application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(2) If proper payment is not received, the license or temporary license shall not be issued or renewed. If a license or renewal card has already been issued, it shall be ineffective.

(3) If proper payment is not received for an examination fee, the applicant's examination results shall not be released.

§313.7. Qualifications.

(a) Applicants qualifying under the Act, §451.153(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the National Athletic Trainers Association Board of Certification (NATABOC).

(b) In place of the requirements in subsection (a) of this section, applicants qualifying under the Act, §451.153(1) shall have:

(1) for all applications filed on or before August 31, 2004, a baccalaureate or post- baccalaureate degree which includes at least three hours of academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology;

(D) human physiology or physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries; and

(F) effective for all applications filed on or after September 1, 2000, advanced athletic training, advanced sports medicine, or assessment of injury;

(2) for all applications filed on or after September 1, 2004, a baccalaureate or post- baccalaureate degree which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities; and

(3) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 clock hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 clock hours of the 1,800 clock hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 clock hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 clock hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by the college or university's athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(c) Applicants qualifying under the Act, §451.153(2) or §421.153(3) shall have a baccalaureate or post-baccalaureate degree or a state issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 clock hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 clock hours of the 720 clock hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(d) Certification required. An applicant must have:

(1) a current standard first aid and adult cardiopulmonary resuscitation certificate; or

(2) current certification for emergency medical services (EMS) with the Texas Department of Health.

(e) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(f) The board shall accept no course which an applicant's transcript indicates was not completed with a passing grade for credit.

(g) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

(h) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

§313.8. Student Athletic Trainer Activities.

A student athletic trainer may perform the activities of an athletic trainer only under the following circumstances.

(1) A student shall be considered to be performing the activities of an athletic trainer under the Act §451.153, and not in violation of the Act §451.151, if the student is performing the activities:

(A) as part of the apprenticeship hours described in §313.7 of this title (relating to Qualifications); or

(B) as follows:

(i) the student's supervising college or university licensed athletic trainer has approved, referred, sent, or directed the student to a setting other than with the student's school's intercollegiate athletes;

(ii) the setting is with another college or university, a high school, a professional athletic team, or a health care clinic; and

(iii) the student is directly supervised in the setting by a licensed athletic trainer.

(2) Hours which fall under paragraph (1)(B) of this subsection shall not be counted as apprenticeship hours unless the hours meet the requirements of §313.7 of this title (relating to Qualifications).

(3) For the purposes of this section, supervision means daily, direct, and immediate communication.

§313.9. Examination for Licensure.

(a) The board shall offer examinations at least two times a year at times and places established by the Administrative Services Committee and announced by the board.

(b) The examination shall consist of written and oral/practical questions and evaluations prescribed by the board.

(c) An applicant may file an application for examination if the applicant:

(1) is within 30 semester hours of graduation;

(2) has completed or is currently pre-registered or enrolled in the courses listed in §313.7 of this title (relating to Qualifications); and

(3) has completed at least 1300 clock hours of the required 1800 clock hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(1); or

(4) has completed at least 600 clock hours of the required 720 clock hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(2) or §421.153(3).

(d) The Administrative Services Committee shall review all applications prior to the examination. An applicant meeting the requirements of subsection (c) of this section or of §313.7 of this title (relating to Qualifications) and pays the required examination fee shall be approved to take the examination.

(e) The board shall notify an applicant whose application has been approved at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(f) An examination registration form must be completed and returned to the board by the applicant with the required examination fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination. Applications which are received incomplete or late may cause a delay.

(g) Examinations shall be graded by the board's designee.

(h) The board shall notify each applicant by mail of the results of the examination within 30 days of the date of the examination.

(i) The following procedures relate to applicants who fail the examination prescribed by the board.

(1) An applicant who fails the examination may take a subsequent examination after paying the examination fee.

(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.

(3) An applicant who fails the examination three times shall have his application denied unless the applicant furnished the board an official transcript from an accredited college or university indicating completed coursework taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s). The applicant must submit an official transcript within eighteen months of the date of the notice from the board which specifies the course work to be completed.

(4) An applicant who completes course work as described in paragraph (3) of this subsection must file an updated application for examination and must successfully complete the examination before an initial license may be issued.

(5) Each applicant who fails the examination may request, in writing, within 60 days from the date of the notification of failure, an examination review (analysis of performance).

(A) All reviews are subject to board security requirements.

(B) The board will set a date and hour within a reasonable time when the examination will be available for review. The appointment will be scheduled in the board's office during regular business hours.

(j) Applicants who have passed the examination and are not degreed will have 90 days from their graduation date to submit all documents and fees necessary to show compliance with this chapter and complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

(k) An applicant who fails to take the examination within a period of two years after an examination approval notice is mailed to him or her by the department may have such approval withdrawn.

§313.10. Temporary License.

(a) A temporary license may be issued to an individual who meets the educational and apprenticeship requirements of this chapter.

(b) After receiving a completed application and the nonrefundable temporary license fee, the board shall issue a temporary license to an applicant meeting the requirements of this section. This

license entitles an applicant to perform the activities of an athletic trainer until the results of the first examination which the applicant is eligible to take are released.

(c) A temporary license shall not be renewed, but a second temporary license may be issued upon approval by the Administrative Services Committee on grounds of documented hardship.

(d) The temporary license of an applicant who failed an examination administered by the board shall be voided and the applicant shall not be eligible for another temporary license.

§313.11. License Renewal.

(a) When issued, a license is valid for one year commencing on the date of issuance of the initial license.

(b) A licensee must renew the license annually.

(c) The renewal date of a license shall be the last day of the month in which the license was originally issued.

(d) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license shall not excuse failure to file for timely renewal.

(e) A licensee must have fulfilled any applicable continuing education requirements prescribed by the board in order to renew the license.

(f) The board shall not renew a license if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License.)

(g) The procedures to renew a license are as follows.

(1) At least 30 days prior to the expiration date of a person's license, the department shall send notice to the licensee at the address in the board's records of the expiration date of the license and the amount of the renewal fee due and a license renewal form which the licensee must complete and return to the board with the required renewal fee.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor or felony convictions.

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing. The current license will be considered active until the renewal is issued or finally denied.

(4) The board shall issue to a licensee who has met all requirements for renewal a license certificate and identification card.

(5) The department shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(6) A person whose license has expired for not more than 90 days may renew the license by submitting to the department the license renewal form and the late renewal fee. The renewal is effective if it is mailed to the department not more than 90 days after the expiration date of the license. The postmark date shall be considered the date of mailing.

(7) A person whose license has been expired for more than 90 days but less than two years from the expiration date may renew the license by submitting to the department the license renewal form and the late renewal fee by August 31, 2000. The person must submit with the required license renewal form a letter stating the reasons for the failure to make a timely renewal.

(8) A person whose license has been expired two years or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the then current requirements and procedures for obtaining a license.

(9) Effective September 1, 2000, a person whose license has been expired one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the then current requirements and procedures for obtaining a license.

(h) Expiration of license.

(1) A person whose license has expired may not hold himself or herself out as an athletic trainer; imply that he or she has the title of "licensed athletic trainer", "athletic trainer" or "sports trainer"; or use "LAT", "AT", or "LATC" or any facsimile of those titles in any manner.

(2) A person whose license has expired may not perform the activities of an athletic trainer.

(3) A person who fails to renew a license is required to surrender the license certificate and identification card to the board after two years from expiration of the license or upon demand. The certificate remains the property of the board.

(i) If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty serving outside the State of Texas shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the renewal fee, but not the late renewal fee.

(6) A licensee renewing under this subsection shall not be required to submit any continuing education hours if continuing education is required to be shown for the renewal. If the licensee is not at the end of his or her three year continuing education period, the licensee will be required to comply with the continuing education requirements at the end of the three year period.

§313.12. Continuing Education Requirements.

(a) The purpose of this section is to establish the continuing education requirements a licensee shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensed athletic trainers.

Continuing education experiences are programs beyond the basic education required to obtain licensure which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of licensed athletic trainers, thus improving athletic training care to the public.

(b) A licensee must complete 30 clock hours of continuing education during each three-year period. The three-year period begins on the first day following the issuance month and ends on the last day of each licensee's renewal month, except that the initial period shall begin with the date the board issues the license certificate and ends on the last day of the third renewal cycle.

(c) Continuing education credit undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses at a regionally accredited college or university related to sports medicine;

(2) clinical courses related to sports medicine;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine or athletic training;

(4) instructing or presenting education programs or activities without compensation at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences in athletic training or sports medicine not to exceed five clock-hours each continuing education period;

(5) publishing a book or an article in a peer review journal relating to athletic training or sports medicine not to exceed five clock-hours each continuing education period; or

(6) serving as a skills examiner at the state licensure examination not to exceed one clock-hour of continuing education credit for each examination date for a maximum of six clock- hours of credit each continuing education period.

(d) Continuing education experience shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (c)(2) or (3) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education experience.

(3) Completion of a cardiopulmonary resuscitation (CPR) techniques course will be credited a maximum of six clock hours.

(4) Completion of a standard first aid techniques course will be credited a maximum of six clock hours.

(5) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(6) Approval of the continuing education committee must be obtained for each continuing education experience described in subsection (c) of this section.

(e) Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty if different from sponsors and contact person.

(f) The board shall employ an audit system for continuing education reporting. The licensee shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit. Only the completed continuing education report form should accompany the renewal form and fee if the licensee has not been selected for audit.

(g) The audit process shall be as follows.

(1) The board shall select for audit a random sample of licensees for each renewal month. Audit forms shall be sent to the selected licensees at the time the renewal notice is mailed.

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the board, to verify proof of having earned the continuing education hours listed on the continuing education report form. The documentation must be provided at the time the renewal form is returned to the board.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

(h) A licensee who has failed to complete the requirements for continuing education may be granted a 180 day extension to the continuing education period.

(1) The request for an extension of the continuing education period must be made in writing.

(2) A subsequent continuing education period shall end three years from the date the previous continuing education period expired, not the date of the end of the extension period.

(3) Credit earned during the extension period may only be applied to the previous continuing education period.

(4) A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(i) A person who fails to complete continuing education requirements for renewal and fails to request an extension to the continuing education period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(j) The continuing education committee may not grant continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsections (b) or (h) of this section;

(4) self-study continuing education programs or activities; or

(5) performance of duties that are routine job duties or requirements.

§313.13. Guidelines for Conduct.

(a) An athletic trainer shall work under the direction of a licensed physician when carrying out the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries.

(b) A licensee shall not misrepresent any professional qualifications or credentials.

(c) A licensee shall not make any false or misleading claims about the effectiveness of any athletic training care.

(d) A licensee shall not promote or endorse products in a manner that is false or misleading.

(e) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of athletic training care.

(f) A licensee shall comply with the provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, and the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483, and any rules of the Board of Health or the Texas State Board of Pharmacy implementing those statutes.

(g) A licensee shall have the responsibility of reporting violations of board rules to the department.

(h) A licensee shall not present false information to the board or the department on any application or other document or in any investigation or disciplinary proceeding of the board or the department.

(i) A licensee shall not aid or abet the practice of an unlicensed person when that person is required to have a license under the Act.

(j) A licensee shall comply with any order relating to the licensee which is issued by the board.

(k) A licensee shall not provide health care services which are not within the definition of "athletic training" in the Act except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157, relating to a physician's delegated authority; other licensure laws; and laws relating to the possession and distribution of controlled substances.

(l) A licensee shall not receive or give a commission or rebate or any other form of renumeration for the referral of athletes for professional services.

(m) A licensee shall provide athletic training services without discrimination based on race, creed, sex, religion, national origin, or age.

(n) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of athlete communications and/or records.

(o) A licensee shall not offer professional services to a person concurrently receiving the same or similar professional services from another individual except with the knowledge of that individual.

(p) A licensee shall not engage in sexual contact or sexually exploitive behavior with a person receiving athletic training services from the licensee. Sexual contact shall mean the activities or behaviors described in the Texas Penal Code, §21.01. Sexually exploitive behavior shall mean any verbal or physical conduct that can reasonably be construed as intended to arouse or gratify the sexual desire of any person.

(q) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's service with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(r) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for athletic training services previously made on a bill or a statement for the client. This requirement applies even if the charges are to be paid by a third party.

(s) Unreasonable or medically unnecessary billing is prohibited.

(t) A licensee shall be subject to disciplinary action by the board if the licensee:

(1) is issued a public letter of reprimand;

(2) is assessed a civil penalty by a court; or

(3) has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Code of Criminal Procedure, Chapter 56, Subchapter B.

(u) The license certificate shall be displayed in the primary office or place of employment of the licensee. In the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card.

(v) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of a license identification card in lieu of the original document.

(w) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card issued by the board.

(x) The licensee shall notify the board of changes in name or preferred mailing address within 30 days of such change.

(y) A licensee may not violate any provision of the Act or this chapter.

(z) A person may not hold himself or herself out as an athletic trainer or perform any of the duties of an athletic trainer as defined in the Act unless the person holds an appropriate license issued under the Act. A person may not hold himself or herself out as an athletic trainer by implying that he or she has the title of "licensed athletic trainer", "sports trainer", or "athletic trainer" or using the letters "LAT", "LATC", or "AT" or any facsimile of those titles in any manner unless the person holds a license issued under the Act.

§313.14. Violations, Complaints, and Disciplinary Actions.

(a) Any person may complain to the board alleging that a person has violated the Act or this chapter.

(b) A person wishing to file a complaint against a licensee or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. The mailing address is Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183.

(c) Anonymous complaints shall be investigated by the department provided that the complainant provides sufficient information.

(d) Complaints shall be investigated in accordance with the following procedures.

(1) The administrator shall make the initial investigation and report the findings to the executive secretary and associate executive secretary.

(2) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant evidence that is in this state.

(3) If the administrator determines that the complaint does not come within the board's jurisdiction, the administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The administrator shall, at least quarterly until final disposition of the complaint, notify the parties to the complaint of the status of the complaint unless such notice would jeopardize an undercover investigation.

(5) The executive secretary, in consultation with the executive secretary emeritus and associate executive secretary, may recommend that the license be revoked, suspended, suspended with probation, or denied or that other appropriate action as authorized by law be taken. The executive secretary, in consultation with the executive secretary emeritus and associate executive secretary, may also recommend that the licensee be reprimanded or that administrative penalties be assessed.

(6) If the executive secretary and the administrator determine that there are insufficient grounds to support the complaint, the administrator shall dismiss the complaint and give written notice of the reason for dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(e) The board may deny an application or institute disciplinary actions as described in subsection (d)(5) of this section for a violation of the Act or this chapter.

(f) Prior to institution of formal proceedings for disciplinary actions as described in subsection (d)(5) of this section, the board shall give written notice to the licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, and the licensee shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(g) If disciplinary action is proposed, the board shall give written notice by certified mail, return receipt requested, that the licensee must request, in writing, a formal hearing within thirty days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(h) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be secured. The executive secretary may determine whether the public interest would be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing.

(1) An informal settlement conference shall be voluntary.

(2) A settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(3) The licensee, the licensee's attorney, the executive secretary, the administrator, and the board's attorney may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(4) The complainant shall not be considered a party in the settlement conference but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(5) At the conclusion of the settlement conference, the executive secretary or his designee may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The executive secretary or his designee may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

§313.15. Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.

(a) The board may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an athletic trainer.

(b) In considering whether a criminal conviction directly relates to the occupation of an athletic trainer, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to be an athletic trainer. The following felonies and misdemeanors relate to the license of an athletic trainer because these criminal offenses indicate an unwillingness or an inability to be able to perform as an athletic trainer:

(A) the misdemeanor of knowingly or intentionally acting as an athletic trainer without a license issued under the Act;

(B) a misdemeanor and/or felony offense involving moral turpitude;

(C) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any offenses in this subsection.

(vi) the misdemeanors and felonies listed in clauses (i)-(v) of this subparagraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and this chapter;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an athletic trainer. In determining the present fitness of a person, the board shall consider the evidence described in the Occupations Code, Chapter 53, relating to Consequences of Criminal Conviction.

(c) The board's procedures for revoking, suspending, probating, reprimanding, or denying a license to persons with criminal backgrounds are as follows.

(1) The executive secretary shall give written notice to the person that the board proposes to deny the application or suspend, probate, reprimand, or revoke the license after a hearing in accordance with the provisions of §313.16 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, probates, reprimands, or revokes an application or license under this section, the executive secretary shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for review of the evidence presented to the board and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) of the earliest date that the person may appeal.

§313.16. Formal Hearings.

(a) The administrator, on request from a licensee or applicant, may initiate a formal hearing.

(b) A hearing shall be conducted in accordance with the Administrative Procedure Act (APA) and this section.

(c) An administrative law judge (ALJ) appointed by the State Office of Administrative Hearings (SOAH) shall preside over and conduct the hearing. After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(d) The final order or decision will be rendered by the board.

§313.17. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title "athletic trainer" or practice athletic training after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at §313.6 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

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

Filed with the Office of the Secretary of State, on May 5, 2000.

TRD-200003174
Natalie Steadman
Chair
Texas Department of Health
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 458-7236

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 290. PUBLIC DRINKING WATER

Subchapter H. CONSUMER CONFIDENCE REPORTS

30 TAC §§290.271 - 290.275

The Texas Natural Resource Conservation Commission (commission) proposes new §§290.271- 290.275, Consumer Confidence Reports. The commission proposes these revisions to Chapter 290, Public Drinking Water, in order to implement a federal rule requiring community water systems to prepare and provide to their customers annual consumer confidence reports on the quality of the water delivered by the systems.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

As part of the 1996 Amendments to the Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (EPA) was required to develop rules requiring community water systems to develop reports on the quality of the water they provide to their customers. These reports provide valuable water quality information to customers of community water systems and allow the customers to make health-based decisions regarding their drinking water consumption.

Consumer confidence reports are the centerpiece of public right-to-know provisions under the SDWA. The information contained in the reports is intended to raise consumer awareness of where their drinking water comes from, help them understand the process by which safe drinking water is delivered to their homes, and educate them on the importance of preventative measures, such as source water protection, that help to ensure a safe drinking water supply. Additionally, the reports provide information for consumers with special health needs and provide information and resources for accessing source water assessments and health effects data.

The federal rule was finalized on August 19, 1998. Community water systems were required to prepare and distribute the first report by October 19, 1999, the second report by July 1, 2000, and subsequent annual reports by July 1, thereafter. Most community water systems developed and distributed reports during 1999.

The federal rule requires states that have safe drinking water primacy enforcement responsibilities to adopt the federal consumer confidence report provisions by August 21, 2000. States may adopt by rule alternative requirements for the form and content of the report. The alternative requirements must provide the same type and amount of information as required by the federal rule and must be designed to achieve an equivalent level of public information and education as would be achieved under the federal rule. These alternative requirements must be submitted to EPA for approval.

Program staff conducted a series of workgroup meetings with representatives of community water systems and interested parties to receive comment and suggestions on the development of the state rules and on the content of a report that would best inform consumers. Program staff also provided assistance during the systems' development of the first report that was distributed by October 19, 1999, and has used information gathered from this assistance in the development of this proposal.

SECTION BY SECTION DISCUSSION

Proposed new §290.271, relating to Purpose and Applicability, explains that the rules establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers.

Proposed new §290.272, relating to Contents of the Reports, describes the information that must be included in the reports. The reports must include information on the source of the drinking water, including any information on source water assessments that have been conducted. The reports must provide explanations for definitions and references of technical and scientific terms used. At a minimum, the terms that need to be defined in the reports are maximum contaminant level goal (MCLG), maximum contaminant level (MCL), variances, exemptions, treatment techniques, action level (AL), parts per million (ppm), parts per billion (ppb), parts per trillion (ppt), parts per quadrillion (ppq), nepholometric turbidity units (NTU), million fibers per liter (mfl), millirems per year (mrem/year), and picocuries per liter (pCi/l).

Proposed new subsection (c) requires the inclusion of information on detected regulated and unregulated contaminants and disinfection by-products subject to mandatory monitoring by 30 TAC Chapter 290, Subchapter F state regulations. The proposed rules do not require reporting of Secondary Constituent Levels listed in §290.113. This section provides appendices that the systems must use in preparing the required tables for the report. Appendices contained in §290.275 provide guidance on how to report the contaminants. Appendix A, relating to Converting MCL Compliance Values for Consumer Confidence Reports, provides factors for converting scientific MCL values into units, such as ppm and ppb, that may be used in the consumer confidence report. Appendix B, relating to Regulated Contaminants, provides information on the likely sources of detected contaminants. Appendix C, relating to Health Effects Language, provides information on potential health effects of detected contaminants that must be included in the consumer confidence report.

Proposed new subsection (d), information on *Cryptosporidium*, radon, and other constituents, explains that if the system has performed monitoring for *Cryptosporidium* or radon, and the monitoring indicates the presence of *Cryptosporidium*, radon, or other contaminants in the finished water, the report shall include the results of the monitoring and the significance of the results.

Proposed new subsection (e), compliance with National Primary Drinking Water Regulations (NPDWR), explains that any violation of the NPDWR requirements occurring over the year

covered by the report must be noted in the report. NPDWR requirements include: monitoring and reporting of compliance data; filtration and disinfection equipment and processes; lead and copper controls; treatment techniques for Acrylamide and Epichlorohydrin; i.e., recordkeeping of compliance data; special monitoring requirements such as those prescribed by the NPDWR; and violation of the terms of a variance, exemption, administrative order, or judicial order.

Proposed new subsection (f) requires the systems operating under the terms of a variance or exemption to explain the terms and status of the variance or exemption.

Proposed new subsection (g) details the following information that must be included in the report: a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water; phone number of the owner/operator; a statement in Spanish explaining where to call for more information in Spanish and other languages as necessary; information on opportunities for public participation, such as the system's board meetings; and information on interconnector emergency sources of water used during the calendar year. In addition, the report may include additional information that is consistent with, but does not detract from, the report's intended purpose.

Proposed new §290.273, relating to Required Additional Health Information, provides required language that must appear in the report. Subsection (a) includes language on the vulnerability of the general population and certain populations to certain microbial contaminants. Subsection (b) explains that systems which detect arsenic levels above 25 micrograms per liter, but below the MCL, shall include the provided statement about arsenic. Subsection (c) explains that a system that detects nitrate levels above five mg/l but below the MCL, must include the provided statement about the impacts of nitrate on children. Subsection (d) provides a statement on the impacts of lead on children that shall be included by systems where the action level is greater than 5.0% of the homes sampled when 20 or more samples are gathered. Subsection (e) provides that any water system subject to this section may seek approval from the executive director to write its own alternative information statements.

Proposed new §290.274, relating to Report Delivery and Recordkeeping, explains that the reports must be delivered to customers by July 1 of each year. The system shall use adequate and appropriate means for delivering the report to its customers. Systems shall certify that the report has been distributed and provide a copy to the executive director by August 1 of each year. The report shall be made available upon request, and those systems serving 100,000 people or more shall post the report to a publicly accessible site on the Internet. Finally, any system that provides water to another community water system shall deliver the information contained in §290.272 to the community water system by April 1 or a date agreed upon by both systems.

Proposed new §290.275 contains the appendices relevant to this subchapter. These tables appear in the Tables and Graphics section of this issue of the *Texas Register*.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for state government as a result of administration or enforcement of the proposed new sections. However, there will be significant fiscal implications to units of local government that own community water systems.

The proposed rules will require units of local government that own community water systems to prepare and provide to their customers annual consumer confidence reports on the quality of water delivered by the system. This action is mandated by the 1996 Amendments to the SDWA.

The proposed rules establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers, including a template that will be accompanied by required and suggested language to complete the report.

The fiscal impact to local governments for the development and distribution of the report is estimated to range from $1.00 per connection for those systems with fewer than 500 customers to $2.50 per connection for systems with 100,000 or more customers. Systems with a customer base between 500 and 100,000 will have cost implications between $1.00 to $2.50 per connection.

The following estimates are based on comments received from representatives of large, medium and small water systems at a public meeting the agency held on November 9, 1999.

The estimated average cost for the 24 cities in Texas with 100,000 or more customers to comply with the proposed rules is $2.50 per customer annually, according to representatives from the cities of Austin, Dallas, Fort Worth, Houston, and San Antonio. It is anticipated that these reports will cost more to produce and deliver than other systems because they will be professionally produced by graphic designers and print shops instead of using the template developed by the agency.

The estimated average cost for the approximately 2,000 community water systems serving at least 500, but less than 100,000 customers to comply with the proposed rules is estimated between $1.00 to $2.50 per customer annually, according to representatives from the City of College Station, Eco Resources, and Severen Trent Environmental. The higher cost estimate reflects the use of a consultant to complete the report and have it professionally printed. The lower cost estimate reflects the community water system's use of the agency's proposed template to comply with the proposed rules.

The estimated average cost for the 2,500 small community water systems serving fewer than 500 customers to comply with the proposed rules is $1.00 per customer annually, according to representatives from Kingsland and Postwood Municipal Utility Districts. It is anticipated that small community water systems will use the proposed template to comply with the rules.

The fiscal costs are determined based on the minimum requirements of the content of the report as set out in this proposed rulemaking. The report's content includes information obtained through monitoring and sampling that is already required of these systems through other regulatory requirements. This proposal does not require any new sampling, testing, or data gathering. System owners on their own may include other information in the report. Costs on which the fiscal impact is based are those related to the development of the document, the copying or printing of the document, and the method for distribution of the report. In most cases, community water systems will be taking available data and information and developing ta-

bles as described in the proposed rules. These tables will be accompanied by suggested and required language found in the proposed rules to complete the development of the report. The report will then either be copied or printed. Distribution procedures may include by mail, an insert in the monthly service bill, or hand-delivery by meter readers during their monthly routes. Any additional cost associated with the inclusion of other information not required by the rulemaking is not part of the fiscal implications cited.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public will benefit by having current information on the quality of the water delivered by their water system, which will allow them to make personal health-based decisions regarding their drinking water consumption. The information contained in these annual reports may raise consumer awareness of where their water comes from, help them understand the process by which safe drinking water is delivered to their homes, and educate them about the importance of preventative measures, such as source water protection, that ensure a safe drinking water supply. Information in the report can be used by consumers, especially those with special health needs, to make informed decisions regarding their drinking water.

Businesses which manage community water systems for units of local government should not be adversely affected by the provisions of the rules. The proposed rules do not require any new sampling, testing, or data gathering. The rules do, however, require the affected unit of local government to pay the cost of preparing and providing consumer confidence reports to its customers.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

Certain small and micro-businesses may experience adverse economic impacts, which are not anticipated to be significant, as a result of implementing the proposed rules.

Some privately held community water systems and "ancillary" community water systems with fewer than 500 customers, such as trailer parks and retirement homes, may be owned by persons, small businesses, or micro-businesses. These systems will also be required to comply with the proposed rulemaking and will have similar fiscal implications to the local governments. It is estimated that the fiscal impact to small and micro-businesses which hold community water systems will range from $1.00 to $2.50 per customer annually for the development and distribution of the report.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. The rules implement federal requirements related to community water systems' responsibility to develop and distribute an annual report on the quality of the water they provide to their customers. These reports, called consumer confidence reports, are required of all community water systems, whether these systems are publicly or privately owned. The proposed rules establish the minimum requirements for content in the report and for the distribution of and recordkeeping associated with the report. While the proposed rules are not intended to protect the environment, they may help in reducing human health risks by providing customers with information about their drinking water. The proposed rules will not adversely affect in a material way the economy of the state, any sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state. Therefore, the proposed rules do not meet the definition of a "major environmental rule."

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement SDWA provisions requiring community water systems to develop annual reports on the quality of the water they provide to their customers. These annual reports are known as consumer confidence reports. The federal regulations require states with safe drinking water primacy enforcement responsibilities to adopt the federal consumer confidence report provisions by August 21, 2000. The proposed rules provide the requirements for the information that at a minimum shall be contained in the reports. This information shall include the source of the drinking water provided by the system, information on any source of water assessments conducted, explanations of the technical terms and references used, and information on regulated and unregulated contaminants. The report shall also include any results from monitoring that is done to determine the presence of *Cryptosporidium*. The proposed rules also provide language to be used in the report regarding health information, such as vulnerability by general and certain populations to contaminants. Finally, the rules provide that the reports will be delivered to customers by July 1 of each year and copies will be maintained for a designated period.

The proposed rulemaking does not impose a burden on private property as the subject of the rules is related to reporting information on the quality of water provided by community water systems. The proposed rulemaking implements SDWA requirements that states with safe drinking water primacy enforcement responsibilities must adopt. The proposed rulemaking action is intended to fulfill an obligation mandated by federal law.

Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on June 12, 2000 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, 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 1999-065-290-WT. Comments must be received by 5:00 p.m., June 19, 2000. For further information, please contact Bruce Moulton, Policy and Regulations Division, (512) 239-4809.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code, §341.031, which allows the commission to adopt rules to implement the SDWA, 42 United States Code §§300 et seq.; and Health and Safety Code, §341.0315, which requires public water supply systems to meet the requirements of commission rules.

The proposed new sections implement Texas Water Code, §341.031.

§290.271. Purpose and Applicability.

(a) The purpose of the sections in this subchapter is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize any risk from exposure to contaminants detected in the drinking water in an accurate and understandable manner. This subchapter applies only to community water systems.

(b) Each community water system must provide to its customers an annual report that contains the information specified in this subchapter.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report shall contain definitions of:

(A) Maximum contaminant level goal (MCLG) - the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety; and

(B) Maximum contaminant level (MCL) - the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology.

(2) The following terms and their descriptions shall be included when they appear in the report:

(A) MFL - million fibers per liter (a measure of asbestos);

(B) mrem/year - millirems per year (a measure of radiation absorbed by the body);

(C) NTU - nephelometric turbidity units (a measure of turbidity);

(D) pCi/l - picocuries per liter (a measure of radioactivity);

(E) ppb - parts per billion, or micrograms per liter (g/l);

(F) ppm - parts per million, or milligrams per liter (mg/l);

(G) ppt - parts per trillion, or nanograms per liter; and

(H) ppq - parts per quadrillion, or picograms per liter.

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act shall include a description of the variance or the exemption granted under §290.115 of this title (relating to Variance and Exemptions).

(4) A report that contains data on a contaminant for which the EPA has set a treatment technique or an action level must include, depending on the contents of the report, the definitions for:

(A) Treatment technique (TT) - a required process intended to reduce the level of a contaminant in drinking water; and

(B) Action level (AL) - the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium*. Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, action level, or treatment technique;

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, relating to Unregulated Contaminants and found in §290.275(4) of this title (relating to Appendices A-D); and

(C) disinfection by-products or microbial contaminants for which monitoring is required by 40 CFR §141.142, relating to Information Collection Requirements (ICR) for Public Water System- Disinfection by-product and related monitoring, and 40 CFR §141.143, relating to Microbial Monitoring Requirements.

(2) The data relating to these detected contaminants shall be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its reports must be displayed separately.

(3) The data shall be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years. Furthermore, results of monitoring in compliance with the 40 CFR §141.142, relating to ICR Disinfection by- product and related monitoring, and 40 CFR §141.143, relating to ICR Microbial Monitoring Requirements, need only be included for five years from the date of the last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) shall contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the treatment technique or specific action level applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with National Primary Drinking Water Regulations and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) If sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) If compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detection expressed in the same units as the MCL.

(iv) If the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done prior to multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Turbidity), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs or treatment techniques. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium*), the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium*, radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium*, the report must include a summary of the results of the monitoring and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the *National Primary Drinking Water Regulations* (NPDWR) or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-

4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in subsection (b)(6) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1)-(7) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems which have failed to install adequate filtration, disinfection equipment or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease- causing organisms. These organisms include bacteria, viruses and parasites which can cause symptoms such as nausea, cramps, diarrhea and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems which fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275 of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of treatment techniques for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report shall include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title (relating to General Applicability), the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A)-(C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are by- products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally-occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration (FDA) regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) The report must include the following statement in a prominent placement on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para obtener una copia de esta informacion traducida al Espanol, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of non-English and non-Spanish speaking residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

§290.273. Required Additional Health Information.

(a) All reports must prominently display the following language on the first page of the consumer confidence report or in bold print on the second page of the report: "*You may be more vulnerable than the general population to certain microbial contaminants, such as Cryptosporidium, in drinking water. Infants, some elderly, or Immuno-compromised persons such as those undergoing chemotherapy for cancer; those who have undergone organ transplants; those who are undergoing treatment with steroids; and people with HIV/AIDS or other immune system disorders can be particularly at risk from infections. You should seek advice about drinking water from your physician or health care provider. Additional guidelines on appropriate means to lessen the risk of infection by Cryptosporidium are available from the Safe Drinking Water Hotline (800-426-4791).*"

(b) A system which detects arsenic levels above 25 micrograms per liter but below the maximum contaminant level (MCL) shall include in its report a short informational statement about arsenic using the following language: "*EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations*."

(c) A system which detects nitrate at levels above five milligrams per liter (mg/l), but below the MCL shall include a short informational statement about the impacts of nitrate on children using the following language: "*Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask advice from your health care provider*."

(d) Systems collecting 20 or more samples which detect lead above the action level in greater than 5.0% of homes sampled shall include a short informational statement about the special impact of lead on children using the following language: "*Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at the homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline at (800) 426-4791*."

(e) Any water system subject to any or all of subsections (b)-(d) of this section may seek approval from the executive director to write its own alternative educational informational statement.

(f) Public water systems that detect total trihalomethanes above 0.080 mg/l but below the MCL of 0.10 mg/l as an annual average must include health effects language provided by 40 Code of Federal Regulations §141.154(e), Appendix C, paragraph (73).

§290.274. Report Delivery and Recordkeeping.

(a) Each community water system must mail or otherwise directly deliver one copy of the report to each customer by July 1 of each year. Each report must contain data collected during the previous calendar year. For tests not performed each year, data used shall not be older than five years. Each new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter. In addition, each community water system must provide a copy of the report to each new customer upon request.

(b) In addition to delivering a report to each customer, the system must make a good-faith effort to reach consumers who do not get water bills, using means recommended by the executive director. An adequate good-faith effort should be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good-faith effort to reach such consumers should include a mix of methods appropriate to the particular system such as: posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunchrooms of public buildings; delivery of multiple copies for distribution for single-billed customers such as apartment buildings or large private employers; and delivery to community organizations.

(c) Each community water system shall certify to the executive director that the report has been distributed and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the executive director. This certification and a copy of the report must be mailed to the executive director by August 1 of each year.

(d) Each community water system shall deliver the report to any other agency or clearinghouse identified by the executive director no later than the date the system is required to distribute the report to its customers.

(e) Each community water system shall make its report available to the public upon request.

(f) Each community water system serving 100,000 or more people shall post its current year's report to a publicly accessible site on the Internet.

(g) Any system providing water to a community water system shall deliver the applicable information required by §290.272 of this title (relating the Content of Reports) to the retail community by April 1 or at a time agreed upon by the parties and specifically included in a contract or written agreement between the parties.

(h) Any system subject to this subchapter must retain copies of its consumer confidence reports for no less than five years.

§290.275. Appendices A-D.

The following appendices are integral components of the subchapter:

(1) Appendix A–Converting MCL Compliance Values for Consumer Confidence Reports;
Figure: 30 TAC §290.275(1)

(2) Appendix B–Sources of Regulated Contaminants;
Figure: 30 TAC §290.275(2)

(3) Appendix C–Health Effects Language;
Figure: 30 TAC §290.275(3)

(4) Appendix D–Unregulated Contaminants.
Figure: 30 TAC §290.275(4)

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 May 8, 2000.

TRD-200003211
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 23, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

Chapter 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

Subchapter B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.34, 321.35, 321.48

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §321.34, Procedures for Making Application for an Individual Permit; §321.35, Procedures to Making Application for Registration; and new §321.48, Additional Requirements for Certain Concentrated Animal Feeding Operation. The primary purpose of the proposed amendments and new section is to implement House Bill (HB) 801, Section 3, relating to Public Participation in Certain Environmental Permitting Procedures of the Texas Natural Resource Conservation Commission, 76th Legislature, 1999.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

HB 801, Section 3 (the "Act") amended Texas Water Code (TWC), Chapter 26 by adding §26.0286, which requires the commission to process an application for authorization to construct or operate a concentrated animal feeding operation (CAFO) as an application for an individual permit, if the CAFO is located or proposed to be located in the watershed of a sole-source surface drinking water supply and it is located sufficiently close, as determined by commission rule, to a public water supply system intake in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply. Section 7(b) of the Act provides that the changes in law apply only to applications declared administratively complete on or after September 1, 1999 and that former law is continued in effect for those applications declared administratively complete before September 1, 1999. In July 1999, the commission proposed new §321.48 to implement this legislation (see 24 TexReg 5458). In response to comments received on that proposal and to allow further consideration of alternative approaches for implementation of this legislation, the commission allowed proposed new §321.48 to be automatically withdrawn six months after the date of publication (see 25 TexReg 562).

As a general rule under TWC, Chapter 26, any CAFO that discharges wastewater into or adjacent to water in the state must obtain an individual permit from the TNRCC according to TWC, §26.121 unless the commission chooses to regulate the CAFO through rule under the repealed version of TWC, §26.040 or through a general permit under the existing version of TWC, 26.040. The commission has adopted rules in Chapter 321, Subchapter B, under TWC, §26.040 which allows some CAFOs to apply for a registration rather than an individual permit if they meet the conditions set out in the rules. In addition, under §321.33(b)(1), the executive director may require any CAFO to obtain an individual permit if the CAFO is located near surface or groundwater resources even if the CAFO would otherwise be eligible to obtain authorization through registration. The Act merely prohibits CAFOs located sufficiently close, as determined by commission rule, to a public water supply system intake in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply from obtaining authorization through registration, and instead requires them to obtain an individual permit as is generally required of all CAFOs under TWC, §26.121.

This rulemaking now proposes new amendments to Chapter 321 to implement HB 801, Section 3.

SECTION BY SECTION DISCUSSION

Section 321.34(a) is proposed to be amended to substitute the phrase "concentrated animal feeding operation (CAFO)" for "CAFO" and to correct the cross-reference to "§321.35(c)(1)-(13)" by changing it to "§321.35(c)." This change accounts for the proposed change in the number of paragraphs under §321.35(c), discussed later in this preamble, by simply referring to §321.35(c), rather than §321.35(c)(1)-(14). Other minor editorial changes are proposed under §321.34(b)(2), (c), (d), and (h). These changes are the deletion of extraneous "(relating to...)" phrases and the correction of "Executive Director" to "executive director."

Section 321.35(a) is proposed to be amended to substitute the phrase "concentrated animal feeding operation (CAFO)" for "CAFO." Section 321.35(c) is proposed to be amended to add the following sentence, relating to applicability of the proposed new §321.35(c)(8), the requirements of which are discussed later in this preamble: "The requirements under

paragraph (8) of this subsection apply only to registration applications declared administratively complete on or after the effective date of paragraph (8) of this subsection." While the Act provides that its provisions apply to applications declared administratively complete on or after September 1, 1999, the commission proposes that this rule apply prospectively, rather than retroactively, in order to ensure the orderly implementation of the rule and increase certainty for persons involved in the registration and permitting processes. The executive director is reviewing CAFO registration applications declared administratively complete on or after September 1, 1999 but prior to the effective date of these rules on a case-by-case basis to determine if the location of the CAFO is sufficiently close to the intake of a sole-source surface drinking water supply so that the contaminants discharged from the CAFO could potentially affect the drinking water supply. Based upon this review, the executive director will determine whether an individual permit is required by the Act.

Section 321.35(c) is proposed to be amended under paragraph (7) to divide the requirements for this application requirement into subparagraphs (A) and (B) to improve the readability of this paragraph. The parenthetical term "(USGS)" is also proposed to be added after the phrase "United States Geological Survey."

Section 321.35(c) is also proposed to be amended to add new paragraph (8), which would require all applications for registration, including amendments and renewals, to submit one original, with the remainder in copies, of a USGS 7-1/2 minute quadrangle topographic map or an equivalent high quality copy showing: (1) the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, and within 500 feet of the outer boundary of the land application area(s), open lots and control facilities; (2) the location of all private water wells (abandoned or in use), public wells, springs, or ponds within one mile of the outer boundary of the retention facility and downstream of the CAFO, and all other watercourses and lakes located downstream and within three miles of the outer boundary of the CAFO; (3) the location of the protection zone, as defined in §321.48 of this title (relating to Additional Requirements for Certain Concentrated Animal Feeding Operations), for each watercourse or lake located downstream and within three miles of the outer boundary of the CAFO, if any such watercourse or lake is a "sole-source surface drinking water supply" as defined in TWC, §26.0286(a); and (4) delineation of the locations of all pens, lots, ponds, and any other types of control or retention facilities that are located within the protection zone of a "sole-source surface drinking water supply" as defined in TWC, §26.0286(a).

The requirements under §321.35(c)(8) are proposed to clarify registration application requirements and to ensure that a CAFO registration application will include the information necessary to determine whether the CAFO is or will be located within the protection zone of a sole-source surface drinking water supply, thereby necessitating processing as an individual permit application. These proposed rules require the applicant to delineate the protection zone associated with a sole-source surface drinking water supply. The number and identity of surface water bodies that qualify as sole- source surface drinking water supplies changes with some frequency. For example, a community that relies exclusively on surface water could add a secondary groundwater supply. If this community had the only sole-source supply intake in the surface water body, and that water body qualified as a sole- source surface drinking water supply only because of this community, then the water body would no longer qualify as a sole-source. On the other hand, a lake which does not initially qualify as a sole- source surface drinking water supply could have an intake added by a community relying exclusively on surface water. In this way, a water body may become a sole-source surface drinking water supply. In order to assist the regulated community in making determinations concerning protection zones of watercourses and lakes which are sole-source surface drinking water supplies, the executive director maintains a list of sole-source public water system intakes, which facilitates the identification of the watercourses and lakes qualifying as sole-source surface drinking water supplies. This list is available on the agency's web site at www.tnrcc.state.tx.us.

In order to account for the addition of new proposed §321.35(c)(8), existing paragraphs (8)-(13) are proposed to be renumbered (9)-(14). Proposed paragraph (11) contains the clarification of "NRCS" by changing it to "Natural Resource Conservation Service (NRCS)," and substituting "NRCS" for "Natural Resource Conservation Service" under subparagraph (E).

Proposed new §321.48, implements the requirements of new TWC, §26.0286, relating to Procedures Applicable to Permits for Certain Concentrated Animal Feeding Operations, as added by HB 801, Section 3.

Proposed new §321.48(a) provides that this section applies to any application for registration to construct or operate a CAFO that is declared administratively complete on or after the effective date of these rules. While the Act provides that its statutory provisions apply to applications declared administratively complete on or after September 1, 1999, the commission proposes that this rule apply prospectively, rather than retroactively, in order to ensure the orderly implementation of the rule and increase certainty for persons involved in the registration and permitting processes.

Proposed new §321.48(b) provides that if, as of the date of declaration of administrative completeness, any part of any pen, lot, pond, or any other type of control or retention facility is located within the protection zone of a "sole-source surface drinking water supply," as defined in TWC, §26.0286(a), the application must be processed as an application for an individual permit. Thus, the determination of whether or not a CAFO is in the protection zone is based upon the facts established at the time of declaration of administrative completeness. If a later date were used, an application for a facility within a protection zone might be processed as a registration only to be subject to re-processing as an individual permit based upon changed circumstances occurring at a later date. Establishing a fixed time for such determinations increases certainty in the process. With regard to the areas of the permitted or registered site within the protection zone that trigger the requirement for an individual permit (i.e., any part of any pen, lot, pond, or any other type of control or retention facility), these are the areas with the greatest concentration of animal waste within the site, and therefore releases of waste from these areas have the potential to adversely impact a sole-source surface drinking water supply.

Proposed new §321.48(c) defines "protection zone" as that area within the watershed of a sole-source surface drinking water supply, as defined in TWC, §26.0286(a), that is within two miles of the normal pool elevation, as indicated on the USGS map, of

a sole-source surface drinking water supply; or within two miles of that part of a perennial stream that is tributary to the sole-source surface drinking water supply and within three linear miles upstream of the normal pool elevation, as indicated on the USGS map, of a sole-source surface drinking water supply; or within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake. The protection zone is intended to provide for greater scrutiny and opportunities for public participation of those CAFO applications within the protection zone. The primary pollutants of concern within protection zones include the nutrients phosphorus and nitrogen, which CAFOs have the potential to release. The protection zone of a sole-source water supply is proposed to extend three miles upstream from any perennial stream as defined by a USGS topographic map primarily because perennial streams are the primary contributors to reservoirs. Therefore, potential pollutants associated with land-use activities along or near the banks of perennial streams take a more direct route to the reservoir than activities further inland or those along an intermittent stream. For intakes on streams, the protection zone is the area within two miles of the three-mile stream reach upstream from the intake. This approach of extending the area of influence further upstream of perennial streams is consistent with the Texas Source Water Assessment and Protection Program Strategy approved by the United States Environmental Protection Agency.

The two-mile distance around the reservoir is proposed based on the increased potential for CAFOs within that area to have adverse impacts on a sole-source surface drinking water supply. It is more likely that, outside the protection zone as defined in this rule, released contaminants will be absorbed or otherwise attenuated prior to entering the aquatic environment. In other words, compared to any released nutrients from CAFOs within a protection zone, any released nutrients from CAFOs located outside a protection zone are more likely to be attenuated (e.g., assimilated by terrestrial or aquatic plants or microorganisms) before entering the sole-source surface drinking water supply. The protection zone, as defined in proposed new §321.48(c), surrounds the entire sole-source surface drinking water supply. A protection zone based only on the intake point would not take the entire water supply into consideration and, therefore, would contain gaps that could leave portions of the water supply unprotected. For example, if the protection zone was proposed to be based on the intake point, a CAFO, or many CAFOs, for that matter, could be located in close proximity to a reservoir which is a sole-source surface drinking water supply, and be further than two miles from the intake point, and not be subject to individual permits, but still pose deleterious threats to the quality of the drinking water supply. In addition, by applying the protection zone around the entire water body, the protection zone will remain constant, even though new water supply intakes may be added. For example, if the protection zone were based on the intake point, and new sole-source intakes were added each year for several years, then the protection zone would necessarily have to be redefined each time an intake was added, for several years in a row. In such a case, there would be much less certainty over whether a registration or an individual permit would be required in the context of this proposed rule. Thus, defining the protection zone in the manner proposed in this rule, based on the entire surface water body, facilitates the efficient administration of the Act.

In addition, under existing §321.33(n), any new CAFO located within one mile of Coastal Natural Resource Areas as defined by the Natural Resources Code, §33.203(1) must apply for and obtain an individual permit in accordance with §321.34. That rule is designed to provide a closer review of applications and allow for a contested case hearing prior to a CAFO locating within one mile of ecologically sensitive estuaries. Unlike §321.33, which is intended to protect ecologically sensitive estuary systems and other coastal waters, the proposed rules are related to drinking water supplies. Therefore, a protection zone of greater than one mile is warranted due to the human health concerns related to drinking water.

The commission intends to revisit the definition of the protection zone once a vulnerability assessment has been completed for all public water systems. These assessments, which are required by the 1996 amendments to the Safe Drinking Water Act (SDWA), are scheduled to be completed by May 2003 and will take into consideration soils, climate, slope, land use, and other factors which will be used to determine the vulnerability of a water supply to a list of contaminants. The SDWA amendments strengthened protections for all members of the public, while allowing the agency to focus on the highest risks to human health and to develop responsible solutions. The criteria for determining relative susceptibility to different sources of contamination incorporates sound scientific principles which will yield similar results under similar circumstances when applied in different parts of the state. The results of this study will allow the commission to, in the future, promulgate rules that are more specifically tailored to the individual characteristics and vulnerability of each sole source surface drinking water supply. In the absence of this scientific data and because the Act applies to applications currently being processed, the commission believes that the conservative approach reflected in these rules is both appropriate and reasonable.

FISCAL NOTE

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five- year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed rules would implement certain provisions of HB 801, relating to Public Participation in Certain Environmental Permitting Procedures of the Texas Natural Resource Conservation Commission, 76th Legislature, 1999, which amends TWC, Chapter 26.

HB 801 requires the agency to process an application for authorization to construct or operate a CAFO as a application for an individual permit, if the CAFO is located or proposed to be located in the watershed of a sole-source surface drinking water supply and it is located sufficiently close to a public water supply system intake in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply.

Currently, under §321.33(b)(1), the executive director may require CAFOs located close to surface water resources to obtain an individual permit. To implement HB 801, the proposed rules would require an individual permit for CAFOs located within the defined protection zone. There are currently 591 permitted or registered CAFOs, of which an estimated 70 or 12%, would fall in a defined protection zone and upon amendment or renewal would be required to apply for an individual permit rather

than a registration. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, the proposed rules are not anticipated to have significant costs for those applicants deemed to be within a protection zone and required to obtain an individual permit unless the commission grants a request for a contested case hearing by an affected person. Costs for those seeking permit applications would still include consultant and/or engineering fees for permit application preparation, permit fees, and costs associated with facility design and construction to meet agency and statutory requirements. However, if the commission grants a request for a contested case hearing, estimated costs to the applicant, could range anywhere from $5,000- $100,000 for attorney fees. The amount of attorney fees would vary, depending on the complexity of the issues involved, and the length of the hearing. The number of individual permit applications subject to contested case hearings cannot be determined. In general additional costs to document existing data in the forms required for an individual permit will vary depending on the detail and data entry required to document compliance with permit requirements and are not anticipated to be significant.

PUBLIC BENEFIT

Mr. Horvath has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement and compliance with these proposed rules will be increased protection of the public drinking water supply and the possibility of increased opportunity for public participation in the CAFO permitting process conducted by the commission. The proposed rules would require the agency to process an application for authorization to construct or operate a CAFO as a application for an individual permit, if the CAFO is located or proposed to be located in the watershed of a sole-source surface drinking water supply and it is located sufficiently close to a public water supply system intake in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply.

Currently, under §321.33(b)(1), the executive director may require CAFOs located close to surface water resources to obtain an individual permit. The proposed rules would require an individual permit for CAFOs located within the defined protection zone. There are currently 591 permitted or registered CAFOs, of which an estimated 70 or 12%, would fall in a defined protection zone. Upon amendment or renewal, CAFOs located within the protection zone would be required to apply for an individual permit rather than a registration. This will allow for increased protection of the public drinking water supply by allowing for the possible inclusion of site-specific requirements into an individual permit. This will also allow for an increased opportunity for public participation by providing an opportunity for affected persons to request a contested case hearing on the application. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, the proposed rules are not anticipated to have significant costs for those applicants deemed to be within a protection zone and required to obtain an individual permit unless the commission grants a request for a contested case hearing by an affected person. Costs for those seeking permit applications would still include consultant and/or engineering fees for permit application preparation, permit fees, and costs associated with facility design and construction to meet agency and statutory requirements. However, if the commission grants a request for a contested case hearing, estimated costs to the applicant could range anywhere from $5,000-$100,000 for attorney fees. The amount of attorney fees would vary, depending on the issues involved, and the length of the hearing. The number of individual permit applications subject to contested case hearings cannot be determined. In general additional costs to document existing data in the forms required for an individual permit will vary depending on the detail and data entry required to document compliance with permit requirements and are not anticipated to be significant.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In general, no significant economic effects are anticipated to small and micro-businesses as a result of implementing the proposed rules. However, adverse economic effects could be anticipated to small and micro-businesses if there is a contested case hearing. Small or micro-businesses affected by the proposed rules could include feedlots, dairies, poultry operations, hog farms, or other livestock operations that meet the definition of a CAFO, including confinement of greater than or equal to 1,000 animal units.

Currently under §321.33(b)(1), the executive director may require CAFOs located close to surface water resources to obtain an individual permit. The proposed rules would require an individual permit for CAFOs located within the defined protection zone. There are currently 591 permitted or registered CAFOs, of which an estimated 70 or 12%, would fall in a defined protection zone and upon amendment or renewal would be required to apply for an individual permit rather than a registration. It is not known how many of these facilities are small or micro-businesses. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, the proposed rules are not anticipated to have significant costs for those applicants deemed to be within a protection zone and required to obtain an individual permit unless the commission grants a request for a contested case hearing by an affected person. Costs for those seeking permit applications would still include consultant and/or engineering fees for permit application preparation, permit fees, and costs associated with facility design and construction to meet agency and statutory requirements. However, if the commission grants a request for a contested case hearing, estimated costs to the applicant could range anywhere from $5,000-$100,000 for attorney fees. The amount of attorney fees would vary, depending on the complexity of the issues involved, and the length of the hearing. The number of individual permit applications subject to contested case hearings cannot be determined. In general additional costs to document existing data in the forms required for an individual permit will vary depending on the detail and data entry required to document compliance with permit requirements and are not anticipated to be significant.

DRAFT REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. The proposal does not meet the definition of "major environmental rule" for several reasons. First, these proposed rules are procedural in nature, dealing primarily with application requirements that are needed to enable the executive director to determine whether a particular CAFO is

located in the watershed of a sole-source surface drinking water supply and sufficiently close to an intake of a public water supply system in such a surface drinking water supply that contaminants discharged from the CAFO could potentially affect the public drinking water supply. If so located or proposed to be so located, the commission, by statute, must process an application for authorization to construct or operate such a CAFO as an individual permit application. Furthermore, the commission's rules currently allow the executive director to require a CAFO to apply for an individual permit if the operation is located near surface water resources. Therefore, the requirement to apply for an individual permit is not a new requirement, and thus the rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state. Finally, because the rules deal primarily with application requirements, they are procedural in nature and would not adversely affect the environment, or the public health and safety of the state or a sector of the state.

In addition, these proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because there are no such corresponding federal standards. This proposal does not exceed an express requirement of state law because it is specifically required by TWC, §26.0286, which requires the commission to use certain procedures for processing applications for certain CAFOs. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the September 14, 1998 Memorandum of Understanding between the United States Environmental Protection Agency and the TNRCC, authorizing the commission to implement the National Pollution Discharge Elimination System permitting program in Texas, requires CAFOs, as defined in the federal Clean Water Act, to obtain Texas Pollution Discharge Elimination System authorization but does not specify whether the authorization must be through an individual permit, registration under a permit-by-rule, or through a general permit. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state law (i.e., TWC, §26.0286, which requires the commission to use certain procedures for processing applications for certain CAFOs).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the proposed rules is to implement the requirements of HB 801 regarding CAFOs. The specific primary purpose of the proposed rules is to establish by rule the parameters of how to determine, in accordance with HB 801, whether a particular CAFO is located in the watershed of a sole-source surface drinking water supply and is located sufficiently close to an intake of a public water supply system in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply; thereby requiring the commission to process an application for authorization to construct or operate such a CAFO as an individual permit application. The proposed rules will substantially advance this stated purpose by establishing the protection zone, which is the primary parameter of how to determine whether a particular CAFO is located in the watershed of a sole-source surface drinking water supply and is located sufficiently close to an intake of a public water supply system in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply, thereby triggering permit requirements.

Promulgation and enforcement of these proposed rules will not affect private real property which is the subject of the rules primarily because these proposed rules are procedural in nature. A CAFO facility located within the protection zone would still be able to operate, but only after obtaining an individual permit rather than another form of authorization such as a registration. These proposed rules are not anticipated to affect private real property because they do not prohibit or restrict a CAFO from operating within a protection zone. They simply require the facility to follow different procedures for obtaining authorization to construct or operate. Furthermore, CAFOs located near surface water resources are already required to prevent the likelihood of inadvertent discharges and to ensure that permitted discharges do not degrade water quality. These proposed rules establish by rule the parameters of how to determine, in accordance with HB 801, whether a particular CAFO is located in the watershed of a sole-source surface drinking water supply and is located sufficiently close to an intake of a public water supply system in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply; thereby requiring the commission to process an application for authorization to construct or operate such a CAFO as an individual permit application. Therefore, these proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the proposed rules are not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on June 15, 2000 at 10:00 a.m. in Building F, Room 3202A at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in the 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, 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 1999-030-321-AD. Comments must be received by 5:00 p.m., June 19, 2000. For further information, please contact Ray Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amended and new sections are proposed under TWC, §26.0286, which requires the commission to process an application for authorization to construct or operate a CAFO as an application for an individual permit if the CAFO is located or proposed to be located in the watershed of a sole-source surface drinking water supply and it is located sufficiently close to a public water supply system intake in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply. The rules are also proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §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; §5.013, which establishes the commission's authority over various statutory programs; §26.011, which establishes the commission's authority over water quality in the state; and §26.028, which establishes the commission's authority to approve certain applications for wastewater discharge; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendments and new section implement TWC, §26.0286.

§321.34. Procedures for Making Application for an Individual Permit.

(a) A concentrated animal feeding operation (CAFO) [~~CAFO~~] that was not authorized under a rule, order, or permit issued or adopted by the commission and in effect at the time of the adoption of these amended rules (1999) shall apply for an individual permit in accordance with the provisions of this section or shall apply for registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only individual permit, for a term of five years, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements) and shall demonstrate compliance with the requirements specified in §321.35(c) [~~§321.35(c)(1)-(13)~~] of this title [~~(relating to Procedures for Making Application for Registration)~~]. Applicants shall comply with §§305.41, 305.43, 305.44, 305.46, and 305.47 of this title (relating to Applicability, Who Applies, Signatories to Applications, Designation of Material as Confidential, and Retention of Application Data). Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 and §305.504 of this title (relating to Fee Assessments and Fee Payments). An annual Clean Rivers Program fee is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with §§305.61 and 305.63-305.68 of this title (relating to Applicability, Renewal, Transfer of Permits, Permit Denial, Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Chapter 26 of the Texas Water Code. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) All applications for permit renewal must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and be in accordance with one of the following.

(1) (No change.)

(2) Except as provided by §305.63(a)(3) of this title [~~(relating to Renewals)~~], an application for a renewal of an individual permit for a facility as described in §321.33(a)(2) of this title (relating to Applicability) may be granted by the executive director without public notice if it does not propose any change which constitutes a major amendment as defined in Chapter 305 of this title (relating to Consolidated Permits) or a major source as defined under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the permit in which the commission has determined that:

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

(3) (No change.)

(c) Each applicant shall pay an application fee as required by §305.53 of this title [~~(relating to Application Fees)~~].

(d) A permittee submitting an application for renewal satisfying the criteria in subsection (b)(2) of this section will automatically be issued a notice of renewal for the existing permit by the executive director [~~Executive Director~~].

(e)-(g) (No change.)

(h) If an application requests an amendment as defined by §321.33(p) of this title [~~(relating to Applicability)~~] of an existing individual permit, the application shall be filed and processed under in this section.

(i) (No change.)

§321.35. Procedures for Making Application for Registration.

(a) A concentrated animal feeding operation (CAFO) [~~CAFO~~] that is not authorized under a rule, order, or permit of the commission in effect at the time of the adoption of these amended rules (1999) shall apply for and receive registration under this section or shall apply for an individual permit in accordance

with the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). A person who requests a registration or renewal of such registration granted under this subchapter, or an amendment as defined in §321.33(p) of this title (relating to Applicability), shall submit a complete and accurate application to the executive director, according to the provisions of this section.

(b) (No change.)

(c) Application for registration under this section shall be made on forms prescribed by the executive director. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate Texas Natural Resource Conservation Commission regional office. The requirements under paragraph (8) of this subsection apply only to registration applications declared administratively complete on or after the effective date of paragraph (8) of this subsection. The completed application shall be submitted to the executive director signed and notarized and with the following information:

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

(7) One original (remainder in copies) United States Geological Survey (USGS) 7-1/2 minute quadrangle topographic map or an equivalent high quality copy showing:

(A) the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, and within 500 feet of the outer boundary of the land application area(s), open lots and control facilities; and [,]

(B) the location of all private water wells (abandoned or in use) and public wells and all springs, lakes, or ponds within one mile of the outer boundary of the retention facility and downstream of the facility.

(8) For all registration applications, including amendments and renewals, one original (remainder in copies) USGS 7-1/2 quadrangle topographic map or an equivalent high quality copy showing:

(A) the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, and within 500 feet of the outer boundary of the land application area(s), open lots and control facilities;

(B) the location of all private water wells (abandoned or in use), public wells, springs, or ponds within one mile of the outer boundary of the retention facility and downstream of the CAFO, and all other watercourses and lakes located downstream and within three miles of the outer boundary of the CAFO;

(C) the location of the protection zone, as defined in §321.48 of this title (relating to Additional Requirements for Certain Concentrated Animal Feeding Operations), for each watercourse or lake located downstream and within three miles of the outer boundary of the CAFO, if any such watercourse or lake is a "sole-source surface drinking water supply" as defined in Texas Water Code (TWC), §26.0286(a); and

(D) delineation of the location of all pens, lots, ponds, and any other types of control or retention facilities that are located within the protection zone of a "sole-source surface drinking water supply" as defined in TWC, §26.0286(a).

(9) [~~(8)~~] Sections of the pollution prevention plan to be designated by the executive director. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a licensed professional engineer must be submitted (if applicable).

(10) [~~(9)~~] A copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner/operator of any lands to be utilized under the proposed CAFO. This requirement does not apply to any lands not owned, operated, or controlled by the applicant for the purpose of off-site land application of manure wherein the manure is given or sold to others for beneficial use, provided the owner/operator of the CAFO is not involved in the application of the manure.

(11) [~~(10)~~] A certification by a Natural Resource Conservation Service (NRCS) [~~NRCS~~] engineer, licensed professional engineer or qualified groundwater scientist documenting the absence or presence of any recharge features identified on any tracts of land owned, operated or controlled by the applicant and to be used as a part of a CAFO. Documentation, by the certifying party shall identify the sources and/or methods used to identify the presence or absence of recharge features. The documentation shall include the method or approach to be used to identify previously unidentified and/or undocumented recharge features that may be discovered during the time of construction. At a minimum, the records and/or maps of the following entities/agencies shall be reviewed to locate any artificial recharge features:

(A) Railroad Commission;

(B) Groundwater District, if applicable;

(C) Texas Water Development Board;

(D) TNRCC;

(E) NRCS [~~Natural Resource Conservation Service~~];

(F) previous owner of site, if available, and

(G) on-site inspection of site with a NRCS engineer, licensed professional engineer or qualified groundwater scientist.

(12) [~~(11)~~] Where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the proposed site plan shall also indicate the specific location of any and all recharge features found on any property owned, operated, or controlled by the applicant under the application as certified by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist. The applicant shall also submit a plan, developed by a NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation which may include the following:

(A) installation of the necessary and appropriate protective measures for each located recharge feature such as impervious cover, berms, or other equivalent protective measures covering all affected facilities and land application areas; or

(B) submission of a detailed groundwater monitoring plan covering all affected facilities and land application areas. At a minimum, the ground-water monitoring plan shall specify procedures to annually collect a ground-water sample from representative wells, have each sample analyzed for chlorides, nitrates, and total dissolved

solids, and compare those values with background values for each well; or

(C) any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature.

(13) [~~(12)~~] Area land use map (Air quality only). This map shall identify the property line, the permanent odor sources and the distance and direction to any residences, animal feeding operations, businesses, public parks or occupied structures within a one mile radius of the permanent odor sources to show compliance with §321.46 of this title [~~(relating to Air Standard Permit Authorization)~~]. The map shall include the north arrow and scale of map.

(14) [~~(13)~~] The applicant shall indicate in the application the location and times where the application may be inspected by the public. Within 48 hours of receiving notice of administrative and technical completeness, the applicant shall make a copy of the application and the entire pollution prevention plan available for public inspection at the applicant's place of business during normal business hours, Monday through Friday, and at a public place within the county where the proposed facility is to be located so that the copy may be made available for inspection at a public place during normal business hours. For the purposes of this section, normal business hours shall be at a minimum of: 9:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday allowing for the observance of state and/or federal holidays. Such places may include, but are not limited to, public libraries; district, county, or municipal offices; community recreation centers; or public schools.

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

(g) (Air Quality Only). To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title [~~(relating to Air Standard Permit Authorization)~~].

(h) Registrations issued under §321.37 or §321.47 of this title (relating to Action on Applications for Registration or Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization) shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. However, if the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption. An application for renewal of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and, except as otherwise provided in paragraphs (1)-(5) of this subsection, be processed according to §321.36 and §321.37 of this title (relating to Notice of Application for Registration and Action on Application for Registration). A registration for a facility described in §321.33(a)(2) of this title [~~(relating to Applicability)~~] may be renewed, according to the following procedures:

(1) (No change.)

(2) Each applicant shall pay an application fee as required by §305.53 of this title [~~(relating to Application Fees)~~].

(3) (No change.)

(4) If the application for renewal of a registration cannot meet all of the criteria in paragraph (1) of this subsection, then an application for renewal of the registration shall be filed in accordance with subsection (a) of this section and processed in accordance with §§321.36-321.37 of this title [~~(relating to Notice of Application for Registration and Action on Applications for Registration)~~].

(5) (No change.)

§321.48. Additional Requirements for Certain Concentrated Animal Feeding Operations.

(a) This section applies to any application for registration to construct or operate a concentrated animal feeding operation (CAFO), including amendments and renewals, that is declared administratively complete on or after the effective date of this section.

(b) If, as of the date of declaration of administrative completeness, any part of any pen, lot, pond, or any other type of control or retention facility is located within the protection zone of a "sole-source surface drinking water supply," as defined in Texas Water Code, §26.0286(a), the application for authorization to construct or operate a CAFO shall be processed as an application for an individual permit under §321.34 of this title (relating to Procedures for Making Application for an Individual Permit).

(c) In this subchapter, "protection zone" is defined as that area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply; or

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

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 May 8, 2000.

TRD-200003212
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: June 19, 2000
For further information, please call: (512) 239-4712

♦ ♦ ♦

Chapter 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

Subchapter A. GENERAL PROVISIONS

30 TAC §312.9

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §312.9, concerning Sludge Fee Program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed change to Chapter 312 is to incorporate recent changes required by House Bill (HB) 3288, 76th Legislature, 1999, which prohibit the Texas Natural

Resource Conservation Commission (TNRCC) from charging disposal fees for sewage sludge that has been treated to the lowest pathogen density level provided by commission rules and that meets metal concentration limits, vector attraction reduction, and pathogen reduction requirements.

SECTION BY SECTION DISCUSSION

Proposed amendments to §312.9(b)(2) will delete this paragraph to conform with HB 3288. The commission can no longer charge a solid waste disposal fee for sewage sludge that has been treated to reduce the density of pathogens to the lowest level provided by TNRCC rules.

FISCAL NOTE

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five- year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed amendments. The amendments would implement provisions of House Bill 3288 (relating to the exclusion of certain sewage sludge from solid waste disposal fees), 76th Legislature, 1999.

The proposed rule amendments would eliminate disposal fees charged to wastewater treatment plants or other processors who produce and use Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

The loss in disposal fee revenue, estimated to be $40,000 per year, is not significant and minimal economic impacts are anticipated to TNRCC. There will be insignificant savings in staff time related to fee assessments.

Local units of government that own and operate wastewater treatment facilities may realize some cost savings for producing Class A sludge, depending on the amount produced. Current fees are $0.20 per dry ton of the material produced. Facilities that produce this material through composting are already exempt from disposal fees under current agency rule. There are 11 entities currently authorized to market and distribute Class A sludge to consumers, most of which are wastewater treatment facilities owned by units of local government. In general, cost savings to these facilities is not expected to be significant due to the abatement of the fee assessment, depending on the amount of material produced.

PUBLIC BENEFIT

Mr. Horvath has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated will be to stimulate the production of sewage sludge for use rather than disposal, divert potential waste from landfills, and recycle a valuable product. The proposed rule amendments would eliminate disposal fees charged to wastewater treatment plants or other processors for the production and use of Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

Wastewater treatment plants may realize some cost savings for producing Class A sludge, depending on the amount produced. Current fees are $0.20 per dry ton of the material produced. There are currently 11 entities authorized to market and distribute the material, most of which are wastewater treatment plants owned or operated by units of local government. Cost savings to these facilities from the abatement of the fee assessment is not anticipated to be significant depending on the amount of material produced.

Any business affected by the proposed rule would realize cost savings from the elimination of the fee assessment, but these savings are not anticipated to be significant depending upon the amount of material produced and used.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic affects are anticipated to any small business as a result of the implementation of the proposed amendments because fee assessments for the production of certain sewage sludge will be eliminated. The amendments would implement provisions of House Bill 3288 (relating to the exclusion of certain sewage sludge from solid waste disposal fees), 76th Legislature, 1999.

The proposed rule amendments would eliminate disposal fees charged to wastewater treatment plants or other processors for the production and use of Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

Although no small or micro-business has been identified to be affected by the proposed rule, any affected small or micro-business would realize cost savings due to the abatement of the fee assessment. Most of the facilities affected by the proposed amendments will be owned or operated by units of local government. However, for those that are small businesses some cost savings could be realized, though these are not anticipated to be significant, depending on the amount of material produced.

DRAFT REGULATORY IMPACT ANALYSIS

Staff has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking does not meet the definition of a major environmental rule as defined by the Texas Government Code. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. The proposed amendment is administrative in that it would eliminate a fee for the disposal of sewage sludge that has been properly treated. The removal of this fee should benefit persons involved in the management of this material and therefore does not materially affect the economy in an adverse way. Elimination of the fee promotes proper treatment of sewage sludge and does not adversely affect the environment, or the public health and safety of the state or a sector of the state.

In addition, the proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. The

amendment implements the specific provisions of House Bill 3288 which removed the commission's authority to assess such a fee.

TAKINGS IMPACT ASSESSMENT

Staff has prepared a takings impact assessment for the rule under Texas Government Code, 2007.043. Promulgation and enforcement of the rule will not burden private real property because the action proposed removes fee requirements for disposal of certain sludges. This action does not constitute a taking of private property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

Staff has reviewed this rulemaking proposal and found that it is subject to the Texas Coastal Management Program (CMP) and is consistent with all applicable goals and policies of the CMP. The rule conforms with §501.14(d) of the Coastal Coordination Act Implementation Rules by promoting the proper treatment of sewage sludge to reduce pathogens as required by the Texas Solid Waste Disposal Act, §361.022(c) through the elimination of a disposal fee on sewage sludge that has been properly treated. Additionally, this rule amendment implements administrative changes without significantly affecting the current substantive requirements which provide for the protection of the environment and public health and safety.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, 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 1998-079- 312-WT. Comments must be received by 5:00 pm., June 19, 2000. For further information, please contact Dan Burke, Policy and Regulations Division, (512) 239-1543.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission; and the Texas Solid Waste Disposal Act, Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste and §361.013, which provides the commission with the authority to adopt rules and establish fees for the transportation and disposal of solid waste.

The proposed amendment implements HB 3288, 76th Legislature, 1999.

§312.9. Sludge Fee Program.

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

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

(b) Except as provided in subsection (f) of this section, the amount of the annual fee which is assessed is determined by weight of solids disposed of and reported to the commission as of September 1, of each year. Failure to report the disposal of sewage sludge or water treatment sludge does not exempt a registrant or permitted from this fee. The fees shall be as follows.

(1) The minimum fee assessed against each registration or permit is $100, regardless of whether the site is active or inactive.

[~~(2) When water treatment sludge is mixed with a Class A sewage sludge or when sewage sludge that is classified as Class A is destined to be applied to the land for a beneficial use, the fee shall be $0.20 per dry ton.~~]

(2) [~~(3)~~] When water treatment sludge is mixed with a Class B sewage sludge or when sewage sludge that is classified as Class B is applied to the land for beneficial use as described in Subchapter B of this chapter (relating to Land Application) the fee shall be $0.75 per dry ton.

(3) [~~(4)~~] When sewage sludge or water treatment sludge is applied to a site for disposal and the disposal was authorized by the commission or predecessor agency prior to the October 1, 1995, the fee shall be $1.25 per dry ton.

(4) [~~(5)~~] When sewage sludge is applied to a site for disposal or when water treatment sludge is applied to a site for disposal and the activity requires a permit as specified in Subchapter F of this chapter (relating to Disposal of Water Treatment Sludge), and the disposal is authorized by the commission or predecessor agency on October 1, 1995 or thereafter, the fee shall be $1.25 per ton.

(5) [~~(6)~~] When water treatment sludge is applied to a site for disposal and the activity does not require a permit as specified in Subchapter F of this chapter [~~(relating to Disposal of Water Treatment Sludge)~~], the fee shall be $0.20 per dry ton.

(6) [~~(7)~~] When sewage sludge is fired in a sewage sludge incinerator as described in Subchapter E of this chapter (relating to Guidelines And Standards for Sludge Incineration) the fee shall be $1.25 per dry ton.

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

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

Filed with the Office of the Secretary of State, on May 8, 2000.

TRD-200003209
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 26, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 16. COASTAL COORDINATION COUNCIL

Chapter 501. COASTAL MANAGEMENT PROGRAM

The Coastal Coordination Council (Council) proposes amendments to §501.3, relating to Definitions and Abbreviations, §501.4, relating to General Procedures, and §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas, as described in the following paragraphs. These amendments are proposed concurrently with proposed amendments

to Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and Chapter 506, relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies. Together, the proposed amendments to Chapter 501 and Chapters 505 and 506 are part of a single rulemaking action.

HISTORY OF THE RULEMAKING

At its meeting in Galveston on December 2, 1999, the Council formed a work group to consider and prepare proposed changes to the Coastal Management Program (CMP) rules. The work group consisted of two of the publicly appointed Council members and representatives from the Council's member agencies: Texas Parks and Wildlife Department (TPWD), Texas Natural Resource Conservation Commission (TNRCC), Texas Department of Transportation, Railroad Commission of Texas, Texas State Soil and Water Conservation Board, and General Land Office. The work group discussed federal fishery actions, management of the state's public beaches, EPA-established Total Maximum Daily Loads (TMDLs), amendments to bring the Council's rules up to date with changes in federal law, clarifying amendments, and amendments that would simplify the consistency review process. The work group prepared recommended rule revisions addressing all of these issues except management of the state's public beaches. The recommended rule revisions were presented at the Council's meeting in Corpus Christi on March 29, 2000, and approved by the Council for publication in the *Texas Register* as proposed amendments.

SUMMARY OF THE PROPOSED AMENDMENTS

The proposed amendment to §501.3(b)(15), relating to the definition of "waters of the open Gulf of Mexico," clarifies that this coastal natural resource area includes the fishery habitat and fishery resources within the area.

The proposed amendment to §501.4(b), relating to General Procedures, deletes the requirement that the Council meet in specific months. The Coastal Coordination Act (the Act) requires only that the Council meet once in each calendar quarter. Texas Natural Resources Code, §33.204(b). This amendment revises the CMP rules to conform to the Act.

The proposed amendments to §501.4(e) , relating to General Procedures, change the deadline for the submission of agenda items by Council members to 21 days prior to a meeting from the current 14 days prior, allow the Council Secretary to notify the Council Members of the agenda via electronic mail, and clarify that the time periods under this subsection are measured in calendar days.

Proposed §501.4(h) , relating to General Procedures, adds a new subsection that describes general rules for the CMP Grants Program. This proposed amendment codifies the Council's existing policies and practices regarding the CMP Grants Program. Each year, the Council receives grant funds from the National Oceanic and Atmospheric Administration for the implementation of the CMP. The Council passes through the majority of these funds to coastal local governments and other qualified entities for the planning and implementation of projects that address environmental problems affecting the coastal area, to promote sustainable economic development, and otherwise further the CMP goals and policies. For each year or for each grant cycle, the Council promulgates guidance for the CMP Grants Program describing the deadlines, schedule, eligibility requirements, funding policies, and approval process.

The proposed amendment to §501.14(f)(1)(D), relating to policies for the discharge of municipal and industrial wastewaters to coastal waters, expands the Council's existing policy for the establishment of TMDLs to require the use of scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders.

Proposed §501.14(t), relating to policies for marine fishery management, establishes a new policy for the promulgation of fishery management measures by the National Marine Fisheries Service (NMFS). The Council asked that the work group draft policies for fishery management measures after Texas fishers raised concerns regarding the effectiveness of management measures for the Red Snapper Fishery, recently proposed by NMFS, and the impact of these management measures on Texas fishers. Council staff presented a report on federal fisheries policies at the Council's December 2, 1999, meeting in Galveston. In developing these policies, the work group worked closely with TPWD and reviewed federal fishery policies as well as fishery policies from Texas, Florida, and other states. The proposed policies for fishery management measures require that fishery management measures conserve fishery resources, be based on the best information available, and be fair and equitable to all of the people of the state.

Concurrent with this rulemaking, the Council is proposing the adoption of a general consistency concurrence to affirm the TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. The proposed general consistency concurrence would find that where NMFS promulgates, as a federal rule, fishery management measures that incorporate and adopt the TPWD's state fishery management policies, the Council deems the federal fishery management measures to be consistent with the CMP goals and policies. A copy of the proposed general consistency concurrence may be obtained by writing to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12872, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile 512/475-0680.

FINDINGS

Ms. Ashley K. Wadick, Deputy Commissioner for Resource Management has determined that during the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local governments. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect the public benefit will result in improved public involvement in resource management decisions and the use of current and best available scientific data for resource management decisions. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect the effect on small businesses will be neutral. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect that there will be no economic cost to persons who are required to comply with the amendments to the Council's administrative policies.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed amendments as a "major environmental rule." Under the Government Code, a

major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these proposed amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile 512/463-6311.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile 512/463-6311. In order to be considered, comments must be received by 5 p.m., on Monday, June 19, 2000. A public hearing on the proposed amendments will be held in conjunction with the meeting of the Council's Executive Committee T:\WPDATA\TAC\Proposed Filings\501prprev.docon Thursday, May 18, 2000, at 1:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. For more information on the public hearing and the Executive Committee meeting, please write to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile 512/475-0680 or visit the Council's web site at http://www.glo.state.tx.us/coastal/ccc.html.

Subchapter A. GENERAL PROVISIONS

31 TAC §501.3, §501.4

LEGAL AUTHORITY

These amendments are proposed under Texas Natural Resources Code §33.053(a)(2) and (4)-(7), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), and describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(2) and (4)-(7), 33.055, 33.202, and 33.204 are affected by these proposed amendments.

§501.3. Definitions and Abbreviations.

(a) (No change.)

(b) The following words, terms, and phrases, when used in this chapter shall have the following meanings, with respect to CNRAs.

(1) - (14) (No change.)

(15) Water of the open Gulf of Mexico - Water in this state, as defined by Texas Water Code, §26.001(5), that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state, including fishery habitat and the fishery resources therein.

(16) (No change.)

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

§501.4. General Procedures.

(a) (No change.)

(b) The council shall meet at least four times a year, once in each calendar quarter. [~~Council meetings shall be scheduled for February, May, August, and November.~~] The chair or any three members of the council may call special meetings by sending a written request to the council secretary to post notice in accordance with the Texas Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, and sending a copy of the request to all council members.

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

(e) Council members may set items for the agenda by submitting them in writing to the secretary at least 21 calendar [~~14~~] days before a meeting except that proposed actions that are the subject of a significant unresolved consistency dispute shall be placed on the agenda as provided in §505.34 and §505.66 of this title (relating to Referral of a Proposed Individual Agency Action to the Council for Consistency Review and Referral of Subdivision Actions to the Council for Consistency Review). The secretary shall notify all council members of the agenda by certified or overnight mail, hand-delivery, electronic mail, or telefax at least ten calendar days before each meeting. The secretary shall notify the public of meetings as required by the Texas Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551.

(f) - (g) (No change.)

(h) The Council shall implement a CMP Grants Program to award federal coastal management grant funds to coastal local governments and other qualified entities for the planning and implementation of projects that address environmental problems affecting the coastal area, to promote sustainable economic development, and otherwise further the CMP goals and policies. For each year or for each grant cycle, the Council shall promulgate guidance for the CMP Grants Program describing the deadlines, schedule, eligibility requirements, funding policies, and approval process.

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 May 5, 2000.

TRD-200003162
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-9129

♦ ♦ ♦

Subchapter B. GOALS AND POLICIES

31 TAC §501.14

This amendment is proposed under Texas Natural Resources Code §33.053(a)(2) and (4)-(7), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), and describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(2) and (4)-(7), 33.055, 33.202, and 33.204 are affected by this proposed amendment.

§501.14. Policies for Specific Activities and Coastal Natural Resource Areas.

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

(f) Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(1) TNRCC rules shall:

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

(D) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings using scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders; and

(E) (No change.)

(2) - (4) (No change.)

(g) - (s) (No change.)

(t) Marine Fishery Management.

(1) Fishery management measures shall conserve the state's renewable marine fishery resources, based upon the best available information, emphasizing protection and enhancement of the marine environment in such a manner as to provide for optimum sustained benefits and use to coastal fishing communities and to all the people of the state for present and future generations.

(2) Fishery management measures shall:

(A) protect the continuing health and sustainability of the marine fisheries resources of the state;

(B) be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the council;

(C) permit reasonable means and quantities of annual harvest, consistent with maximum practicable sustainable stock abundance on a continuing basis;

(D) manage fish stocks as an integral biological unit, to the greatest extent practicable;

(E) assure proper quality control of marine resources that enter commerce;

(F) be fair and equitable to all the people of the state and, to the maximum extent practicable, be carried out so that no person acquires an excessive share of fishing privileges;

(G) include opportunity for public review and comment on proposed management measures; and

(H) be consistent, to the maximum extent practicable, with federal fishery management measures, rules, and fishery management plans and the rules of other states or interstate commissions.

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 May 5, 2000.

TRD-200003163
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-9129

♦ ♦ ♦

Chapter 505. COUNCIL PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The Coastal Coordination Council (Council) proposes amendments to §505.30, relating to Agency Consistency Determinations, §505.31, relating to Preliminary Review of Proposed Agency Actions by the Coastal Coordination Council, §505.38, relating to Council Action on Review of a Proposed Agency Action, and §505.51 relating to Request for a Non-Binding Advisory Opinion and Council Action, as described in the following paragraphs. These amendments are proposed concurrently with proposed amendments to Chapter 501, relating to Coastal Management Program, and Chapter 506, relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies. Together, the proposed amendments to Chapter 505 and Chapters 501 and 506 are part of a single rulemaking action. The preamble to the proposed amendments to Chapter 501 includes a history of this rulemaking.

SUMMARY OF THE PROPOSED AMENDMENTS

The proposed amendment to §505.30, relating to Agency Consistency Determinations, deletes subsection (d) which provides for publication of notice of receipt of an application by an agency and notice to the Council Secretary. The Council's experience in implementing and administering the Coastal Management Pro-

gram (CMP) has been that this provision is irrelevant and burdensome.

The proposed amendments to §505.31(c), (d) and (e), relating to the Permitting Assistance Group, delete provisions that are now duplicated by rules under Chapter 504, Subchapter A, relating to Permitting Assistance. The remaining subsections (c) and (d) are reformatted for clarity.

The proposed amendment to §505.38(a), relating to Council Action on Review of a Proposed Agency Action, clarifies that, if the Council protests a proposed action, the Council must submit its findings to the agency or subdivision proposing the action within 26 days after the date the agency or subdivision proposed the action.

The proposed amendment to §505.51(b), relating to Request for a Non-Binding Advisory Opinion and Council Action, clarifies that the Council must consider a general plan within 90 days of receiving the request.

FINDINGS

Ms. Ashley K. Wadick, Deputy Commissioner for Resource Management has determined that during the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local governments. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect a public benefit will be provided through a clearer statement of the Council's procedures. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect that there will be no effect on small businesses. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect that there will be no economic cost to persons who are required to comply with these procedural amendments.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed amendments as a "major environmental rule." Under the Government Code, a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these proposed amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile 512/463-6311.

Comments on the proposed amendments may be submitted to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile 512/463-6311. In order to be considered, comments must be received by 5 p.m., on Monday, June 19, 2000. A public hearing on the proposed amendments will be held in conjunction with the meeting of the Council's Executive Committee on Thursday, May 18, 2000, at 1:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. For more information on the public hearing and the Executive Committee meeting, please write to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile 512/475-0680 or visit the Council's web site at http://www.glo.state.tx.us/coastal/ccc.html.

Subchapter C. CONSISTENCY AND COUNCIL REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§505.30, 505.31, 505.38

LEGAL AUTHORITY

These amendments are proposed under Texas Natural Resources Code §33.053(a)(7), which provides the Council with authority to describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of coastal natural resource areas (CNRAs) by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(7), 33.055, 33.202, and 33.204 are affected by these proposed amendments.

§505.30. Agency Consistency Determination.

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

(d) When publishing notice of receipt of an application or request for agency proposed action, the agency shall include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies. [~~The agency shall include the council secretary on any public notice list maintained by the agency for proposed actions subject to the CMP. Upon proposal of an action listed on §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), the agency shall provide to the council secretary a one-page notice that an action subject to the CMP has been proposed.~~]

(e) (No change)

§505.31. Preliminary Review of Proposed Agency Actions by the Coastal Coordination Council.

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

(c) [~~The council shall create a Permitting Assistance Group. The Permitting Assistance Group shall be composed of representa-~~

tives of council member agencies and other interested council members.]

[(1)] The Permitting Assistance Group shall be convened as directed by the council or as necessary to respond to a request for preliminary consistency review.

[(2)] After considering the public comments received and within 45 days of receipt of a request for preliminary consistency review, the Permitting Assistance Group shall require that the following written information be produced:

(1) [(A)] a statement from each agency or subdivision required to permit or approve the project as to whether the agency or subdivision anticipates approving or denying the application;

(2) [(B)] if an agency or subdivision intends to deny an application, the agency's or subdivision's explanation of the grounds for denial and recommendations for resolving the grounds in a way that would allow the application to be approved;

(3) [(C)] if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the CMP goals and policies; and

(4) [(D)] if the project is likely to be found inconsistent with the CMP goals and policies, an explanation and recommendation for resolving the inconsistency in a way that would allow the project to be found consistent.

(d) [An individual or small business may request and receive assistance with filing applications for permits or other proposed actions described by §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program). The Permitting Assistance Group shall coordinate preapplication assistance and shall provide to an individual or a small business on request:]

[(1) a list of the permits or other approvals necessary for the project;]

[(2) a simple, understandable statement of all permit requirements;]

[(3) a coordinated schedule for each agency's or subdivision's decision on the action;]

[(4) a list of all the information the agencies or subdivisions need to declare an application for a permit or other approval administratively complete;]

[(5) assistance in completing the applications as needed; and]

[(6) if enough information is already available, and after considering all public comments, a preliminary finding as to whether the project is likely to be found consistent with the CMP goals and policies.]

[(e)] If an agency, subdivision, or applicant has received a preliminary finding of consistency under subsection (c)(3) [(c)(2)(C) or (d)(6)] of this section and a request for referral was filed on that action alleging a significant unresolved dispute regarding the proposed action's consistency, the council may accept the request for referral only if the agency or subdivision has substantially changed the permit or proposed action since the preliminary finding was issued.

§505.38. Council Action on Review of a Proposed Agency Action.

(a) The council may affirm or protest an agency's proposed action. A proposed action is consistent with the CMP goals and policies and approved by the council unless the council determines the proposed action to be inconsistent with the CMP and protests the proposed action. If the council protests the proposed action, the council shall report its findings in writing to the agency or subdivision within 26 days after the date the agency or subdivision proposed the action. The report shall:

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

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

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

Filed with the Office of the Secretary of State, on May 5, 2000.

TRD-200003164
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-9129

♦ ♦ ♦

Subchapter D. COUNCIL ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §505.51

The amendment is proposed under Texas Natural Resources Code §33.053(a)(7), which provides the Council with authority to describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(7), 33.055, 33.202, and 33.204 are affected by the proposed amendment.

§505.51. Request for a Non-Binding Advisory Opinion and Council Action.

(a) (No change.)

(b) The request for an advisory opinion shall be submitted in writing to the council secretary. The council secretary shall forward copies of the request to all council members. The council shall consider the general plan within 90 days of receiving the request [at the first reasonable opportunity].

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State, on May 5, 2000.

TRD-200003165
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-9129

♦ ♦ ♦

Chapter 506. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

31 TAC §§506.11, 506.12, 506.20, 506.24 - 506.26, 506.32 - 506.34, 506.41, 506.42

The Coastal Coordination Council (Council) proposes amendments to §506.11, relating to Definitions; §506.12, relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program; §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects; §506.24, relating to Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program; §506.25, relating to Public Notice and Comment; §506.26, Referral of Federal Agency Activities; §506.32, Public Notice and Comment; §506.33, relating to Referral of Federal Agency Action; §506.34, relating to Council Hearing to Review a Federal Agency Action; §506.41, Public Notice and Comment, and §506.42, relating to Referral of an Outer Continental Shelf Plan, as described in the following paragraphs.

These amendments are proposed concurrently with proposed amendments to Chapter 501, relating to Coastal Management Program, and Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies. Together, the proposed amendments to Chapter 506 and Chapters 501 and 505 are part of a single rulemaking action. The preamble to the proposed amendments to Chapter 501 includes a history of this rulemaking.

SUMMARY OF THE PROPOSED AMENDMENTS

The proposed amendments to §506.11, relating to Definitions, provide definitions for the terms "administratively complete" and "federal development project." The definition for "federal development project" is the same as the federal definition at Code of Federal Regulations, Title 15, §930.31(b). Please note, the National Oceanic and Atmospheric Administration has recently proposed changes to the Coastal Zone Management Act Federal Consistency Regulations (65 Fed. Reg. 20,270 (April 14, 2000)). The proposed rule may also be found at www.nara.gov.

The proposed amendments to §506.12(a)(1)(F) and (b)(1)(A), relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program, list as federal agency activities subject to the CMP the promulgation of fishery management measures by the National Marine Fisheries Service (NMFS). Under the proposed amendments to Chapter 501, proposed §501.14(t), relating to marine fishery management policies, would establish a specific enforceable policy that would apply to the promulgation of fishery management measures by NMFS. The proposed amendment to §506.12(a)(2)(A)(iv) lists as a federal agency activity subject to the CMP the development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans by the U.S. Environmental Protection Agency under the Clean Water Act 33 U.S.C. §1313. The proposed amendments to §506.12(a)(2)(A)(iii), (a)(2)(B)(iii)-(iv), (a)(2)(C)(i)-(ii), (a)(2)(D), (a)(2)(E)(i)-(iii), (a)(2)(F), and (b)(2)(A)(i)-(ii), add clarifying terms to clearly identify the listed actions and to conform to changes in federal law.

The proposed amendments to §506.12(f), relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program, provide for the one-time review of federal agency activities that are not listed in subsection (a)(1) of this section, clarify the references to other subsections, and reformat the subsection for ease in reading. Section 506.12(f) currently provides for the one-time review of federal agency license or permits actions. The proposed amendments will allow for the one-time review of federal agency activities other than those listed under §506.12(a)(1) and (b)(1). Following the one-time review of an unlisted federal agency action or activity, the Council must amend the list of actions and activities described in §506.12(a) before the Council may again review the action or activity that was subject to one-time review.

The proposed amendment to §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, creates a new subsection (d) that provides that the consistency determination for fishery management measures promulgated by NMFS will be reviewed by the Texas Parks and Wildlife Department (TPWD). The purpose of this provision is to affirm TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. As provided under §506.26 of this title, relating to Referral of Federal Agency Activities, the Council will review a fishery management measure promulgated by NMFS if three or more Council members agree that the management measure presents a significant unresolved issue regarding consistency with the CMP goals and policies.

Concurrent with this rulemaking, the Council is proposing the adoption of a general consistency concurrence to affirm the TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. The proposed general consistency concurrence would find that where NMFS promulgates, as a federal rule, fishery management measures that incorporate and adopt the TPWD's state fishery management policies, the Council deems the federal fishery management measures to be consistent with the CMP goals and policies. A copy of the proposed general consistency concurrence may be obtained by writing to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile (512) 475-0680.

The proposed amendment to §506.24(c), relating to Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program, revises the provision relating to consistency determinations for the United States Army Corps of Engineers' ongoing maintenance of commercially navigable waterways to include a reference to the amendments to the Memorandum of Agreement Between the Texas Coastal Coordination Council and the United States Army Corps of Engineers, dated October 27, 1994, that have been approved since this section was adopted.

The proposed amendments to §506.25(a)-(b), relating to Public Notice and Comment; §506.32(a)-(b), relating to Public Notice

and Comment; and §506.41(a)-(b), relating to Public Notice and Comment, provide for the publication of notice of a consistency determination on the Council's web site as well as in the *Texas Register* and provide that the 30-day public comment period will be measured from the date of publication on the Council's web site.

The proposed amendments to §506.25(a), relating to Public Notice and Comment; §505.26(c)-(e), relating to Referral of Federal Agency Activities; §506.32(a), relating to Public Notice and Comment; §506.33(b)-(e), relating to Referral of Federal Agency Action; §506.34(a), relating to Council Hearing to Review a Federal Agency Action; §506.41(a), relating to Public Notice and Comment; and §506.41(b)-(e), relating to Referral of an Outer Continental Shelf Plan, use the defined term "administratively complete" to note that the deadlines for the Council's review of a consistency determination will be determined from the date when the consistency determination is "administratively complete," as defined in § 506.11.

FINDINGS

Ms. Ashley K. Wadick, Deputy Commissioner for Resource Management has determined that during the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local governments. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect the public benefit will be provided through a clarification and improved efficiency of the Council's procedures and by making federal agency activities, relating to the management of fishery resources and the development of TMDLs, more accountable to the people of Texas. The provision for the one-time review of federal agency activities will also provide the Council with greater flexibility for reviewing federal agency activities.

Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect that there will be no effect on small businesses. Ms. Wadick has determined that for each year of the first five-year period the proposed amendments will be in effect that there will be no economic cost to persons who are required to comply with the amendments. The proposed adjustments to the Council's deadlines for review of administratively complete consistency determinations are unlikely to require any additional costs for compliance. Under the existing CMP rules, an applicant is required to submit all of the information identified as necessary to permit an assessment of the probable effects of the proposed activity and its associated facilities on coastal natural resource areas. No costs are anticipated to result from complying with these proposed amendments.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed amendments as a "major environmental rule." Under the Government Code, a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these proposed amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile (512) 463-6311.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile (512) 463-6311. In order to be considered, comments must be received by 5 p.m., on Monday, June 19, 2000. A public hearing on the proposed amendments will be held in conjunction with the meeting of the Council's Executive Committee on Thursday, May 18, 2000, at 1:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. For more information on the public hearing and the Executive Committee meeting, please write to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile (512) 475-0680 or visit the Council's web site at http://www.glo.state.tx.us/coastal/ccc.html.

LEGAL AUTHORITY

These amendments are proposed under Texas Natural Resources Code §33.053(a)(2), (4)-(7), and (10), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), describe an organizational structure for implementing and administering the CMP, and list each federal activity that may have a direct and significant detrimental impact on CNRAs; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP; and §33.206(d) which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans.

Natural Resources Code, §§33.053(a)(2), (4)-(7), and (10), 33.055, 33.202, 33.204, and 33.206(d) are affected by these proposed amendments.

§506.11. Definitions.

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

(1) Administratively complete – A consistency determination shall be determined to be administratively complete when the Council has received the information identified in §506.20 (relating to Consistency Determinations for Federal Agency Activities and Development Projects), §506.30 (relating to Consistency Certifications for Federal Agency Actions), and §506.40 (relating to Consistency Certifications for Outer Continental Shelf Plans).

(2) [~~(1)~~] Applicant – Any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any state, or any state, regional, or local government that, following management program approval, files an application for a federal agency action to conduct an activity affecting the coastal zone.

(3) [~~(2)~~] Applicant agency – Any agency or subdivision or any related public entity such as a special purpose district, which, following federal CMP approval, submits an application for federal assistance.

(4) [~~(3)~~] Assistant administrator – The assistant administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce.

(5) [~~(4)~~] Associated facilities – All proposed facilities:

(A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and

(B) without which the federal action, as proposed, could not be conducted.

(6) [~~(5)~~] CMP boundary – The CMP boundary established in §503.1 of this title (relating to the Coastal Management Program Boundary).

(7) [~~(6)~~] Coastal area – The geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(8) [~~(7)~~] Coastal zone – The portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 503 of this title (relating to Coastal Management Program Boundary).

(9) [~~(8)~~] Consistency certification – The statement submitted by an applicant for a federal agency action subject to federal consistency review certifying that the proposed activity requiring the federal agency action is consistent with the CMP goals and policies.

(10) [~~(9)~~] Consistency determination – The statement and supporting documentation submitted by a federal agency undertaking or planning a federal agency activity subject to federal consistency review certifying that the federal agency activity is consistent with the CMP goals and policies to the maximum extent practicable.

(11) [~~(10)~~] Consistent to the maximum extent practicable – Being fully consistent with the CMP unless compliance is prohibited based upon the requirements of existing law.

(12) [~~(11)~~] Federal agency action – A federal license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity. An action to renew, amend, or modify an existing license or permit shall not be considered an action subject to the CMP if the action only extends the time period of the existing authorization without authorizing new or additional work or activities, would not increase pollutant loads to coastal waters or result in relocation of a wastewater outfall to a critical area, or is not otherwise directly relevant to the policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas).

(13) [~~(12)~~] Federal agency activity – A function that is performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal or a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does not include the issuance of a federal license or permit.

(14) [~~(13)~~] Federal assistance – Assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. Except as otherwise requested by the applicant agency, council review of federal assistance for consistency with the CMP goals and policies is limited to federal programmatic requirements for project level funding. Agency management decisions such as funding priorities and allocation of funds among various projects are not subject to review. For purposes of the review procedures in this chapter, the term includes only the transfer or commitment of funds from the federal agency directly to an applicant agency.

(15) Federal development project – A Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

(16) [~~(14)~~] Federal license or permit – Any authorization, certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant.

(17) [~~(15)~~] Interagency coordination group – For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Voting members of the group shall include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project. The group shall seek and promote broad participation by local governments and coastal citizen groups.

(18) [~~(16)~~] Outer continental shelf (OCS) plan – A plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the CMP.

(19) [~~(17)~~] State single point of contact – The state single point of contact for the Texas Review and Comment System as defined by 1 TAC §5.194 (concerning Definitions).

§506.12. Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Agency Activities and Development Projects:

(A) - (E) (No change.)

(F) National Marine Fisheries Service. Promulgation of fishery management measures for the Gulf of Mexico under 16 United States Code Annotated, §1854; and

(G) [~~(F)~~] All federal agencies:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675);

(iii) natural resource restoration or mitigation plans developed as a result of enforcement actions for violations of §10 of the Rivers and Harbors Act or §404 of the Clean Water Act.

(2) Federal Agency Actions:

(A) Environmental Protection Agency:

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

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d); [~~and~~]

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) [~~(iv)~~] approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

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

(iii) permits under §9 of the River and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the River and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) (No change.)

(C) United Stated Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; and

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525;

(D) Federal Aviation Administration. Airport operating certificates [~~Certificates~~] under 49 United States Code Annotated, §44702 [~~§1432~~];

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) (No change.)

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal zone, that may adversely affect CNRAs.

(1) Federal Activities and Development Projects:

(A) National Marine Fisheries Service. Promulgation of fishery management measures for the Gulf of Mexico under 16 United States Code Annotated, §1854; and

(B) All federal agencies. Activities in OCS waters or within the coastal zone occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal Agency Actions:

(A) United States Department of the Interior:

(i) permits under §11 of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under §5(e) of the Outer Continental Shelf Lands Act, 43 United States Code Annotated, §1334(e), in OCS waters;

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

(3) (No change.)

(c) - (e) (No change.)

(f) On a one-time basis, and subject to the provisions of paragraph (1) of this subsection and federal law, the council may elect to review a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, a proposed federal license or permit action of a type that is not listed in subsection (a)(2) [~~§506.12(a)(2)~~] of this section, [~~title~~] or a state or local government application for federal assistance of a type that is not listed in subsection (a)(3) [~~§506.12(a)(3)~~] of this section [~~title~~].

(1) Once the council has reviewed a proposed federal agency activity of a type that is not listed in subsection (a)(1) of this section, the council may not review any other proposed federal agency activity of that type under this subsection.

(2) Once the council has reviewed a proposed federal license or permit action of a type that is not listed in subsection (a)(2) [~~§506.12(a)(2)~~] of this section [~~title~~], the council may not review any other proposed federal license or permit action of that type under this subsection [~~unless the council amends §506.12(a)(2) of this title to add the federal license or permit action to the list of such actions in §506.12(a)(2) of this title~~].

(3) Once the council has reviewed a state or local government application for federal assistance of a type that is not specifically listed in subsection (a)(3) [~~§506.12(a)(3)~~] of this section [~~title~~], the council may not review any other state or local government application for federal assistance of that type under this subsection [~~unless the council amends §506.12(a)(3) of this title to add that specific type of action to the list of such actions in §506.12(a)(3) of this title~~].

(4) [~~(2)~~] Except as provided in this subsection, the list of federal actions described in subsection (a) [~~§506.12(a)(2) and (3)~~]

of this section [~~title~~] is an exclusive list of federal agency activities, licenses and permits and state and local government applications for federal assistance that are subject to council review. The council may amend the list of actions and activities described in subsection (a) [~~§506.12(a)(2) and (3)~~] of this section [~~title~~] from time to time, and any federal actions or activities described in such amended lists shall be subject to council review.

(g) (No change.)

§506.20. Consistency Determinations for Federal Agency Activities and Development Projects.

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

(d) For fishery management measures for the Gulf of Mexico promulgated by the National Marine Fisheries Service, the consistency determination shall be reviewed by the Texas Parks and Wildlife Department (TPWD). TPWD shall give to the Council regular reports on such consistency reviews. Fishery management measures may be referred to the council for review as described under §506.26 of this title (relating to Referral of Federal Agency Activities).

§506.24. Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program.

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

(c) The council shall review consistency determinations for the United States Army Corps of Engineers' ongoing maintenance of commercially navigable waterways as provided in the Memorandum of Agreement Between the Texas Coastal Coordination Council and the United States Army Corps of Engineers (Review of Coastal Maintenance Dredging Activities for Consistency with the Goals and Policies of the Texas Coastal Management Program, dated October 27, 1994, and subsequent amendments).

§506.25. Public Notice and Comment.

(a) Upon receipt of an administratively complete [~~a~~] consistency determination for a federal agency activity, the council secretary shall publish notice of the consistency determination on the council's web site and in the *Texas Register.*

(b) The public notice shall provide a summary of the proposed federal agency activity, announce the availability of the consistency determination for inspection, and request comment on whether the federal agency activity should be referred to the council for review and whether the activity is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication on the council's web site [~~in the Texas Register~~].

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

§506.26. Referral of Federal Agency Activities.

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

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the federal agency activity is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action and notify the federal agency of its decision within 45 days of receipt of the administratively complete consistency determination [~~certification~~], the council secretary shall notify the chair, who shall schedule a special meeting.

(d) If the council places an action on its agenda, but will not be able to complete a review and notify the federal agency within 45 days of the date the council secretary receives an administratively complete [~~a~~] consistency determination [~~with all required information~~], then the chair shall notify the federal agency of the status of the review and the basis for further delay and request an extension of time to review the matter.

(e) The federal agency may presume council agreement with the federal agency's consistency determination 45 days after the date the council secretary receives an administratively complete [~~a~~] consistency determination [~~with all required information~~], unless the chair or any three members of the council request an extension of time to review the matter. Federal agencies shall approve the first request for an extension of 15 days or less. In considering whether a longer or additional extension period is appropriate, federal agencies should consider the magnitude and complexity of, or the information contained in, the consistency determination.

(f) (No change.)

§506.32. Public Notice and Comment.

(a) Upon receipt of an administratively complete [~~a~~] consistency certification for a proposed federal agency action, the council secretary shall publish public notice of the consistency certification on the council's web site and in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request comment on whether the federal agency action should be referred to the council for review and whether the action is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication of the notice on the council's web site [~~in the Texas Register~~].

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

§506.33. Referral of Federal Agency Action.

(a) (No change.)

(b) To refer a federal agency action, any three members must submit the request for referral to the council secretary in writing within 45 days of receipt of the administratively complete consistency certification.

(c) The council secretary shall add the action to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action within 90 days of receipt of the administratively complete consistency certification, the council secretary shall notify the chair, who shall schedule a special meeting.

(d) If the council has not issued a decision with respect to a proposed federal agency action within 45 days of the date when the council secretary receives an administratively complete [~~a~~] consistency certification [~~with all required information~~], then the chair shall notify the applicant and the federal agency of the status of the review and the basis for further delay.

(e) If any three members of the council do not refer a proposed federal agency action to the council within 45 days of the date when the council secretary receives an administratively complete [~~a~~] consistency certification [~~with all required information~~], then that proposed federal agency action is conclusively presumed to be consistent with the CMP.

§506.34. Council Hearing to Review a Federal Agency Action.

(a) Following referral of a proposed federal agency action, the council shall consider the public comments received, the relevant CMP goals and policies, information submitted by the federal

agency or applicant, and other relevant information and determine whether the proposed action is consistent with the CMP goals and policies within 90 days of the date the council secretary received the administratively complete consistency certification.

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

§506.41. Public Notice and Comment.

(a) Upon receipt of an administratively complete [~~a~~] consistency certification for an OCS plan, the council secretary shall publish notice of the consistency certification on the council's web site and in the *Texas Register*.

(b) The public notice shall provide a summary of the OCS plan, announce the availability of the consistency determination for inspection, and request comment on whether any part of the OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan should be referred to the council for review and whether any part is or is not consistent with the CMP goals and policies. Comments shall be submitted to the council secretary within 30 days of publication of the notice on the council's web site [~~in the Texas Register~~].

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

§506.42. Referral of an Outer Continental Shelf Plan.

(a) (No change.)

(b) To refer part of an OCS plan, three members of the council must submit the request for referral to the council secretary in writing within 45 days of receipt of the administratively complete consistency certification.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the action within 90 days of receipt of the administratively complete consistency certification, the council secretary shall notify the chair, who shall schedule a special meeting.

(d) If the council has not issued a decision with respect to a matter referred under the provisions of this section within 45 days of the date when the council secretary received the administratively complete consistency certification [~~with all required information~~], then the chair shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator of the status of the review and the basis for further delay.

(e) If any three members of the council do not refer any federal actions that will be required to authorize an activity described in detail in an OCS plan to the council within 45 days of the date when the council secretary receives an administratively complete [~~a~~] consistency certification [~~with all required information~~], then the council's concurrence with the consistency certification shall be conclusively presumed.

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 May 5, 2000.

TRD-200003166
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-9129

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part 3. TEXAS RETIREMENT SYSTEM OF TEXAS

Chapter 41. INSURANCE PROGRAMS

Subchapter B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §41.16

The Teacher Retirement System of Texas (TRS) proposes new §41.16 concerning insurance coverage under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. The purpose of the new rule is to make clear that TRS may select or reject coverage options, including inflation protection and nonforfeiture benefits options, that may be offered under the long-term care insurance program.

Ronnie Jung, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Jung has also determined that for each year of the first five years the rule is in effect the public benefit anticipated will be that there will be clarity regarding the agency's ability to select or reject coverage options. There will be no effect on small businesses. There are no anticipated economic costs to the persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas, 78701.

The new section is proposed under the Insurance Code Article 3.50-4A, which gives TRS authority to adopt rules as necessary to implement and administer the Texas Public School Employees Group Long-Term Care Insurance Program. This section is also proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of business of the Board.

Insurance Code Article 3.50-4A, Government Code §825.102, and Texas Administrative Code Title 28 §3.3920 are affected by this proposal.

§41.16. Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

Under the authority granted by Article 3.50-4A of the Texas Insurance Code, the Board of Trustees of the Teacher Retirement System of Texas may select or reject any and all coverage options relating to the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program, including but not limited to:

(1) Inflation protection options, including without limitation inflation protection options based on compound or simple interest assumptions; and

(2) Nonforfeiture benefit options, including without limitation reduced paid-up, extended term, shortened benefit period, and return-of-premium at death.

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 May 5, 2000.

TRD-200003192
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: June 23, 2000
For further information, please call: (512) 391-2115

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

Chapter 15. DRIVERS LICENSE RULES

Subchapter B. APPLICATION REQUIREMENTS–ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.21

The Texas Department of Public Safety proposes an amendment to §15.21, concerning Application Requirements–Original, Renewal, Duplicate, Identification Certificates.

The amendment to the section adds language to paragraph (2) in order to align the rule with Texas Transportation Code, §521.121(4)(b) and the department's current procedure of using an applicant's digital (facsimile) signature for the production of a driver license.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. The cost to individuals who are required to comply with the section as proposed will be the actual cost of the driver license or identification certificate. There is no anticipated adverse economic effect on small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.21. Signature.

The applicant's usual signature is required on all applications for a drivers license or identification certificate.

(1) (No change.)

(2) The signature on the face of the application [~~and on the license certificate~~] must be in ink. The license or certificate must include a facsimile of the license holder's signature or a space on which the holder shall write the holder's usual signature in ink immediately on receipt of the license or certificate. The applicant may sign his name on the back of the application, verifying tests taken, in pencil.

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

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

Filed with the Office of the Secretary of State, on May 1, 2000.

TRD-200003068
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

Chapter 23. VEHICLE INSPECTION

Subchapter A. VEHICLE INSPECTION STATION LICENSING

37 TAC §§23.1, 23.2, 23.8, 23.10

The Texas Department of Public Safety proposes amendments to §§23.1, 23.2, 23.8, and 23.10, concerning Vehicle Inspection Station Licensing.

The amendment to §23.1 deletes subsection (e) which creates an unreasonable and unenforceable requirement on an inspection station by preventing a station from making a new application within one year of the withdrawal of the original application. Amendment to §23.2 and §23.8 deletes language whereby the original purpose of having an inspection lane clearly marked with a 4" x 8" line was to calibrate the headlight machine. Headlight aim is no longer a requirement and the marked lane is no longer necessary. Section 23.10(a) is amended to delete the requirement that inspection stations have to have a display area and the requirement to mount a 4' X 4' board creates an unnecessary financial burden. This required stations to buy a full sheet of plywood and cut it in half. Stations will still have to provide a display area but this can be on a wall or other area.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which autho-

rizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 548 are affected by this proposal.

§23.1. New Applications.

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

~~[(e) Withdrawal of application. An application for a certificate of appointment as a vehicle inspection station may be withdrawn by the applicant at any time. No person may apply for a certificate of appointment as a vehicle inspection station within one year from the date of the withdrawal of the application by the applicant.]~~

(e) ~~[(f)]~~ Frequency of application. Except as provided in §23.13 of this title (relating to Reissue of Inspection Station Certificate of Appointment after Suspension), no person may apply for a certificate of appointment as a vehicle inspection station within one year from the date of denial by the director of an application from the same person.

§23.2. General Space Requirements.

To qualify for a certificate of appointment physical facilities must meet the following standards.

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

(4) Inspection area. Every vehicle inspection station shall have an inspection area within the vehicle inspection station set aside, [~~clearly marked~~] and approved by the department, for conducting the inspection of vehicles. When a vehicle inspection station desires to have more than one inspection area, the space requirements for each lane must be met. For vehicle inspection stations, with trailer endorsement, see specific requirements.

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

(5) (No change.)

§23.8. Equipment Requirements for All Classes of Vehicle Inspection Stations.

(a) Applicant shall be informed of the required equipment including such items as approved testing devices, tools, measuring devices, display board, brake machines, and marked brake test area[~~, and marked inspection test area~~].

(b) - (f) (No change.)

§23.10. Inspection Station Display Area.

(a) Display. All required equipment shall be mounted on the wall in an area of sufficient size [~~, or on a four-foot by four-foot pegboard, plywood board, or similar substance, and displayed~~].

(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 May 1, 2000.

TRD-200003065
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

Subchapter B. GENERAL INSPECTION REQUIREMENTS

37 TAC §23.26, §23.27

The Texas Department of Public Safety proposes amendments to §23.26 and §23.27, concerning General Inspection Requirements.

Because inspection stations are now allowed to inspect large vehicles such as motor homes outside the inspection lane/building, amendment to §23.26 deletes subsection (b)(2) and reformats remaining paragraphs. Amendment to §23.27 adds language to subsection (j) which requires government vehicles in emission counties to be inspected.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. The anticipated cost to individuals who are required to comply with the rule as proposed will be the cost of the vehicle inspection. There is no anticipated adverse economic effect on small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 548 are affected by this proposal.

§23.26. Repairs.

(a) (No change.)

(b) Inspection refusals.

[~~(1)~~] [~~General.~~] No vehicle inspection station shall refuse to inspect a vehicle that is presented for inspection during normal business hours. Vehicle inspection stations are required to inspect only those types of vehicles authorized by its class of certificate of appointment. Examples are as follows.

(1) [~~(A)~~] A governmental vehicle inspection station shall inspect only vehicles owned by political subdivision or state agency.

(2) [~~(B)~~] A public vehicle inspection station shall inspect only those vehicles for which they have endorsements.

~~[(2) Exception. A public vehicle inspection station shall refuse to inspect any motor vehicle too large for the vehicle inspection station entrance.]~~

§23.27. Specific Requirements.

(a) - (i) (No change.)

(j) All vehicles owned by the federal government, except those registered in Texas and displaying Texas registration plates, shall be exempt from all provisions of the Vehicle Inspection Act, rules, and regulations, except those vehicles required to be inspected

in an emission county as required by §23.93 of this title (relating to Vehicle Emissions Inspection Requirements.

(k) (No change.)

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

Filed with the Office of the Secretary of State, on May 1, 2000.

TRD-200003066
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

Subchapter D. VEHICLE INSPECTION RECORDS

37 TAC §23.51

The Texas Department of Public Safety proposes an amendment to §23.51, concerning Vehicle Inspection Records.

The amendment to §23.51 adds "out of state identification certificates" to the list of items which will be kept locked at all times. The VI-30-A forms are out of state identification certificates used to register vehicles and are a government document. Theft of the VI-30-A would enhance a thief's chance at registering a stolen vehicle. Therefore, these should be kept locked just as the inspection certificates and number inserts are kept locked.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the deterrence of theft. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 548 are affected by this proposal.

§23.51. Retention of Records.

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

(f) Certificates, out of state identification certificates and number inserts shall be kept locked at all times to prevent theft.

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 May 1, 2000.

TRD-200003067
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

Chapter 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §§25.19 - 25.21

The Texas Department of Public Safety proposes amendments to §§25.19 - 25.21, concerning Safety Responsibility Regulations.

The amendment to §25.19 is necessary to correct an outdated statutory reference used in the rule. The amendments to §25.20 and §25.21 are necessary so as to ensure that individuals are fully informed regarding the types of evidence of financial responsibility that the department accepts for driver's license road tests, traffic enforcement contacts and during accident investigations.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of department policy. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §601.021, which provides that the department shall administer and enforce this chapter.

This proposal affects Texas Government Code, §411.004(3), and Texas Transportation Code, §601.021.

§25.19. Compulsory Insurance.
A conviction for no liability insurance under Texas Transportation Code, §601.051, and §601.0152 [~~Civil Statutes, Article 6701h, §1A~~], will be enforced on Form SR-115.

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

§25.20. Compulsory Insurance – Driver's License Road Test.

(a) Evidence of financial responsibility. Owners and/or operators of motor vehicles are required to furnish information concerning evidence of financial responsibility upon request to a driver license employee. This department's policy will be to accept the following as evidence of financial responsibility:

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

(4) certificate issued by the state comptroller [~~treasurer~~] that shows that the owner of the vehicle has on deposit with the

comptroller [~~treasurer~~] money or securities in at least the amount required by the Safety Responsibility Act[~~, §25~~];

(5) Texas Department of Transportation carrier registration certificates (cab cards), including: [~~Railroad Commission cab cards:~~]

(A) commercial motor vehicle registration certificates [~~intrastate Railroad Commission cab card with a copy of the authority attached~~];

(B) commercial motor vehicles registered under the Single State Registration System; [~~interstate ICC-regulated carriers Uniform D cab card with Railroad Commission stamp attached; or~~]

(C) temporary registration of international motor carriers (insurance stamp); [~~interstate exempt carriers Uniform D1 cab card with Railroad Commission stamp attached;~~]

(D) household goods carrier registration certificates; or

(E) tow truck registration certificates;

(6) certificate issued by the Department of Public Safety that shows that the vehicle is a vehicle for which a bond is on file with the Department of Public Safety as provided by the Safety Responsibility Act[~~, §24~~];

(7) copy of a certificate issued by the county judge of a county in which the vehicle is registered that shows that the owner of the vehicle has on deposit with the county judge cash or a cashier's check in at least the amount required by the Safety Responsibility Act[~~, §1A(b)(6)~~];

[~~(8) tow trucks displaying a certificate of registration issued by the Texas Department of Licensing and Regulation; ~~]

(8) [~~(9)~~] copies of the aforementioned documents; and

(9) [~~(10)~~] other evidence such as an insurance binder which confirms to the satisfaction of the officer that the owner and/or driver is in compliance with the Safety Responsibility Act.

(b) (No change.)

§25.21. Compulsory Insurance – Compliance and Enforcement.

(a) Evidence of financial responsibility. Owners and/or operators of motor vehicles are required to furnish information concerning evidence of financial responsibility upon request to a law enforcement officer. This department's policy will be to accept the following as evidence of financial responsibility:

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

(4) certificate issued by the state comptroller [~~treasurer~~] that shows that the owner of the vehicle has on deposit with the comptroller [~~treasurer~~] money or securities in at least the amount required by the Safety Responsibility Act[~~, §25~~];

(5) Texas Department of Transportation carrier registration certificates (cab cards). including: [~~Railroad Commission cab cards:~~]

(A) commercial motor vehicle registration certificates; [~~intrastate Railroad Commission cab card with a copy of the authority attached;~~]

(B) motor vehicles registered under the Single State Registration System; [~~interstate ICC-regulated carriers Uniform D cab card with Railroad Commission stamp attached; or~~]

(C) temporary registration of international motor carriers (insurance stamp); [~~interstate exempt carriers Uniform D1 cab card with Railroad Commission stamp attached;~~]

(D) household goods carrier registration certificates; or

(E) tow truck registration certificates;

(6) certificate issued by the Department of Public Safety that shows that the vehicle is a vehicle for which a bond is on file with the Department of Public Safety as provided by the Safety Responsibility Act[~~, §24~~];

(7) copy of a certificate issued by the county judge of a county in which the vehicle is registered that shows that the owner of the vehicle has on deposit with the county judge cash or a cashier's check in at least the amount required by the Safety Responsibility Act[~~, §1A(b)(6)~~];

[~~(8) tow trucks displaying a certificate of registration issued by the Texas Department of Licensing and Regulation; ~~]

(8) [~~(9)~~] copies of the aforementioned documents; and

(9) [~~(10)~~] other evidence such as an insurance binder which confirms to the satisfaction of the officer that the owner and/or driver is in compliance with the Safety Responsibility Act.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on May 1, 2000.

TRD-200003069
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

Part 8. PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY

Chapter 245. GENERAL PROVISIONS

37 TAC §§245.11 - 245.14, 245.20 - 245.23, 245.30, 245.40, 245.41, 245.43, 245.45, 245.47

The Private Sector Prison Industries Oversight Authority (the Authority) proposes amendments to 37 TAC §§245.11-245.13, 245.20-245.23, 245.30, 245.40, 245.41, and new §§245.14, 245.43, 245.45, and 245.47 concerning General Provisions.

The amendments and new sections set the foundation for newly created Authority appointed by the Governor under House Bill 1301. These administrative changes set the standards for operation and the policies and procedures that are to be implemented in order to properly approve, certify, and oversee the operation of private sector prison industries program in the Texas Department of Criminal Justice, the Texas Youth Commission, and county jail correctional facilities, in compliance with the federal Private Sector Prison Industries Enhancement Certification Program.

Representative Ray Allen, ex officio member of the Oversight Authority and author of House Bill 1301, has determined that for first five year period the sections are in effect for the most part the proposed changes are administrative in nature and have limited fiscal impact on state and local government. Section 245.21 will remove the CAC's authority to pay minimum wages for a two month period of training.

Representative Allen also has determined that for the first five year period the sections are in effect the tangible public benefit of these changes are certification that employers will not displace non-inmate employees, and it bringing the program in compliance with new federal laws. There will be no effect on small businesses or micro-businesses. There will be no anticipated cost to persons who are required to comply with the amendments and new sections as proposed.

Comments should be directed to Robert Carter, PIE Program Administrator, 8610 Shoal Creek Blvd., Austin, Texas 78757. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments and new sections are proposed under Texas Government Code, §497.051- 497.062, which provides the Oversight Authority with the authority to promulgate rules; 18 United States Code 1761; 42 United States Code, §§4321-4347; and 40 Code of Federal Regulations Part 1500.

Cross Reference to Statue: Texas Government Code, §§497.051 - 497.062.

§245.11. Payments by Industries to the Private Sector Prison Industries Oversight Account.

(a) (No change.)

(b) The participating agency/entity, facility or private industry partner(s) shall forward the amount of moneys calculated under subsection (a) of this section to the Oversight Authority. The Oversight Authority shall forward the moneys to the State Comptrollers office for deposit in the General Revenue Fund in the Private Sector Prison Industries Oversight Account.

[~~(1)~~] Moneys shall be forwarded on a quarterly basis. A copy of the deposit shall be forwarded to the Oversight Authority or Designee.

[~~(2) The payment shall be reflected in the PIE Quarterly Statistical Report.~~]

§245.12. Policy and Procedural Requirement for Participating Agencies/Entities.

(a) Participating agencies/entities shall develop policies and procedures, pertinent to their individual program and in keeping with State and Federal guidelines and law. Copies of Authority Rules and Federal Guidelines as well as technical assistance shall be provided by Authority staff [~~the PIE Program Specialist~~] upon request.

(b) Participating agencies/entities shall submit their policies and procedures to the Private Sector Prison Industries Oversight Authority [~~(the Authority)~~] for review [~~and approval~~] through the Authority staff [~~PIE Program Specialist~~]. Additionally, participating agencies/entities shall include a copy of the grievance procedure in place at the location where PIE designated cost accounting centers operate.

(c) Authority staff [~~The PIE Program Specialist~~] shall review the submitted policies and procedures for compliance with State and Federal guidelines, law and Oversight Authority Rules.

(1) After reviewing the submitted policies and procedures, Authority staff [~~the PIE Program Specialist~~] shall forward the same to the Authority with a cover memo indicating any areas of perceived non-compliance.

(2) The Authority shall review the submitted policies and procedures and the Authority staff's [~~PIE program Specialist's~~] comments. The Authority shall then make a determination regarding [~~approval of the submitted policies or the nature of~~] any needed corrective action.

(d) The Decision of the Authority shall be communicated to the participating agency/entity through the Authority staff [~~PIE Program Specialist~~].

§245.13. Program Inquires.

In order to keep the Private Sector Prison Industries Oversight Authority informed regarding the PIE Program, all written inquiries, requests for information and concerns, related to the Private Sector Prison Industries Program shall be directed to the Authority staff [~~Program Specialist~~] or Authority Members, and all responses shall be copied to the Chairman of the Private Sector Prison Industries Oversight Authority, with the exception of:

(1) information normally provided by the Authority staff [~~PIE Program Specialist~~] as a routine job function or as technical assistance to the Authority, Bureau of Justice Assistance, state agencies, facilities or industry; or

(2) information that may be provided by participating agencies/entities, facilities or private industry partners regarding their specific program.

(3) Additionally, worker grievances and responses regarding the PIE Program shall be forwarded to the Oversight Authority through the Authority staff [~~PIE Program Specialist~~].

§245.14. Complaint Investigation.

(a) Complaint allegations of violation of Federal Guidelines. Oversight Authority Rules or other areas under jurisdiction of the Authority shall be forwarded to Authority staff for investigation.

(b) Authority staff or designee shall investigate the complaint and record results of the investigation in a file which, at a minimum, shall contain:

(1) the name of the-person who filed the complaint;

(2) the dates the complaint was received by the Authority staff;

(3) the subject matter or nature of the complaint;

(4) the names of each person contacted in relation to the complaint;

(5) a summary of the results of the investigation;

(6) an explanation of the reason the case was closed if no action was taken other than to investigate the complaint.

(c) Authority staff shall assign each case a number and maintain a log of all investigations to include:

(1) the case number;

(2) the date the case was received by the Authority staff;

(3) summary of the complaint;

(4) agency/entity/cost accounting center involved;

(5) name of the complainant;

(6) date the case was closed; and,

(7) whether the complaint allegation was sustained or not sustained.

(d) Upon receipt of the complaint allegation, the Authority staff shall send a letter, acknowledging receipt of the complaint with a copy of this rule attached, to the complainant and the agency / entity/cost accounting center or subject of the complaint and copy the Presiding Officer of the Oversight Authority.

(e) At least quarterly and upon final resolution of the complaint allegation. Authority staff shall advise the complainant, agency/entity/cost accounting center or subject of the complaint and the Presiding Officer and members of the Oversight Authority of the status of the investigation unless notice would jeopardize an undercover investigation.

(f) Upon conclusion of the investigation. Authority staff shall provide written notice to the complainant, the agency/entity/ cost accounting center or subject of the complaint and the Presiding Officer and members of the Oversight Authority.

§245.20. Designation of Cost Accounting Centers.

(a) In order to obtain designation of a new cost accounting center (CAC), participating agencies/entities, facilities or industry partners shall gather and submit to the Authority for review through the Authority staff [~~PIE Program Specialist~~]:

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

(4) a certification by the employer agreeing not to displace any its non-inmate employees with inmate workers in violation of 18 U.S.C. 1761 (c);

(5) [~~(4)~~] if required by federal regulation, documentation of compliance with the National Environmental Policy Act in the form required by those regulations; and

(6) [~~(5)~~] further information as requested by Authority staff [~~the Program Specialist~~] in order to verify that the proposed project is viable, and that the proposed industry partner is financially sound and does not pose an appreciable risk of violating state or federal law related to illegal business practices.

(b) Upon receipt of designation by the Authority, Authority staff [~~the Program Specialist~~] shall notify the participating agency/ entity, facility or industry partner and complete the appropriate Bureau of Justice Assistance forms for designation of a new CAC.

(c) Authority staff [~~The PIE Program Specialist~~] shall submit the designation forms and all supporting documentation to the Bureau of Justice Assistance. This documentation shall include:

(1) copies of consultation provided business and labor organizations;

(2) prevailing wage and non-displacement of workers verifications;

(3) proof of workers compensation coverage or equivalent private insurance; and

(4) a copy of the voluntary agreement to be signed by offender participants.

(d) Copies of Authority Rules and Federal Guidelines as well as technical assistance shall be provided by Authority staff [~~the PIE Program Specialists~~] upon request by a prospective or actual applicant for designation as a CAC.

§245.21. Prevailing Wages and Non-displacement of Workers.

(a) As a part of the cost accounting center (CAC) designation process, participating agencies/entities, facilities or industry partners shall submit verification of payment of the prevailing wage for each job classification, to the Private Sector Prison Industries Oversight Authority [~~(the Authority)~~] through the Authority staff [~~the Private Industry Enhancement (PIE) Program Specialist Wage plans may reflect the minimum wage for a two month training period beginning the date employment begins. Subsequent to this two month period, the wage plan must reflect the prevailing wage.~~] If it is determined that there is no work of a similar nature in the locality, workers shall be paid no less than the minimum wage. The same information shall be submitted at least on an annual basis [~~from the date of designation~~] or as otherwise determined by the Authority. The "locality", for the purpose of this Rule, is local workforce development area [~~the council of government region~~] in which the work is performed.

(b) Participating agencies/entities, facilities or private industry, partners shall obtain written verification from the Texas Workforce Commission (TWC) that the wage plan reflects the prevailing wage for each job classification and:

(1) that the industry project shall not result in displacement of free world workers;

(2) that the industry project will not be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the community.

(c) If participating agencies/entities, facilities or private industry partners are unable to obtain the verifications required under subsection (b) of this section, they may request technical assistance from Authority staff [~~the PIE Program Specialist~~].

(1) In order to obtain technical assistance, the agency/ entity, facility or private industry partner must provide Authority staff [~~the PIE Program Specialist~~] the following information for each job classification:

(A) educational requirements;

(B) job experience (if necessary);

(C) an outline of activities to be performed;

(D) specific responsibilities;

(E) wage rate/progression for the position;

(F) a description of each job; and,

(G) the occupational and industrial numerical code and title as utilized by the opening and wages by occupation data collected by the economic and research and analysis department of the Texas Workforce Commission (TWC).

(2) Authority staff [~~The PIE Program Specialist~~] shall attempt to obtain the required verifications from the TWC. If the TWC is unable to make the required verifications, the Authority staff [~~PIE Program Specialist~~] shall calculate a prevailing wage and, if necessary as part of the designation process for a new Cost Accounting Center, the verifications required under subsection (b) of this section, utilizing the most recent openings and wages by occupation data collected by the economic research and analysis department of the TWC. This information shall be forwarded to the Authority for review.

§245.22. Consultation with Labor and Business Organizations.

(a) Participating agencies/entities shall, as a part of the designation process for a cost accounting center (CAC), provide consultation with representatives of local businesses and labor central bodies, if any exist, and the Texas AFL-CIO and the Texas Association of

Business and Chambers of Commerce. Information shall be provided in writing and, at a minimum, shall include the following:

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

(6) an explanation that statutory consultation is. required; [and]

(7) a statement by the industry applicant that the industry project will not impair existing contracts for services; and, [.]

(8) a statement indicating that comments are invited.

(b) Participating agencies/entities shall provide the required consultations (by outgoing mail or fax) with business and labor organizations within three working days from the date of receipt of complete and accurate prevailing wage and non-displacement of workers information. Failure to provide timely consultation with business and labor organizations in a timely manner may result in a delay in industry project designation by the Private Sector Prison Industries Oversight Authority [(the Authority)].

(c) The information in subsection (b) of this section and any comments by business and labor shall be forwarded to the Authority, through the Authority staff [PIE Program Specialist,] for designation review.

(d) The Authority staff [PIE Program Specialist] shall review the information for completeness prior to submission to the Authority. Incomplete information shall be returned with an explanation of the deficiency.

§245.23. Worker's Compensation for Work Program Participants.

(a) Participating agencies/entities, facilities or private industry partners shall provide proof of worker's compensation insurance to the Private Sector Prison Industries Oversight Authority (the Authority), through the Authority staff [PIE Program Specialist], as a requirement for designation of a cost accounting center (CAC) under the Private Sector Prison Industries Program (PIE) and, upon each renewal period.

(b) (No change.)

§245.30. Distribution of Wages of Work Program Participants.

(a) (No change.)

(b) Distribution of funds shall be reported in accordance with Federal Guidelines, with a copy forwarded to the Private Sector Prison Industries Oversight Authority through the Authority staff [PIE Program Specialist].

(1) Distribution of funds shall be reported in the format designated by the Bureau of Justice Assistance.

(2) The report shall be completed and forwarded on a quarterly basis using the calendar year (January I through December 31). The report shall be submitted not later than the tenth working day following the end of the quarter.

(c) (No change.)

(d) Authority staff [The PIE Program Specialist] shall compile a combined report reflecting all cost accounting centers and shall attach all backup reports. The report shall be forwarded to the Authority for review and a copy forwarded to the Bureau of Justice Assistance or designee.

(e) (No change.)

§245.40. Recidivism Studies.

(a) Agencies/entities sponsoring a private sector prison industry under the oversight of the Private Sector Prison Industries Oversight Authority [(the Authority)] shall, upon request of the Criminal Justice Policy Council (CJPC), provide information regarding the employment status of offender participants in the Private Sector Prison Industries Program that have been released under supervision.

(1) (No change.)

(2) Upon being notified of the request of the CJPC by the Chairman of the Oversight Authority, Authority staff [the PIE Program Specialist] shall advise the participating agencies/entities of the specific information being requested.

(b) Authority staff [The PIE Program Specialist] shall forward the requested information from the participating agencies/entities to the CJPC upon receipt.

§245.41. Program Compliance.

(a) Agencies/entities shall develop policies and procedures and an audit plan to monitor their specific cost accounting centers for compliance with State and Federal law and guidelines.

(1) Compliance monitoring reports, including a proposed corrective action plan for areas of non-compliance, shall be submitted to the Private Sector Prison Industries Oversight Authority [(the Authority)] through the Authority staff [the PIE Program Specialist].

(2) The Authority shall review the reports and determine the appropriateness of the indicated corrective action plan. Significant or continuing non-compliance may result in the un-designation of the cost accounting center.

(b) Additionally, participating agencies/entities shall submit the following documentation.

(1) Quarterly - Utilizing a Calendar Year (January to December).

(A) Facilities and industry partners shall submit the PIE Quarterly Statistical Report to their responsible agency/entity. The agency/entity shall review the report for accuracy and forward it to the Authority staff [PIE Program Specialist] by the tenth working day of the end of the quarter.

(B) Authority staff [The PIE Program Specialist] shall review the report for completeness and accuracy, and produce a combined report of all cost accounting centers. The combined report shall be forwarded to the Authority and Bureau of Justice Assistance.

(2) Annually - As Determined by the Oversight Authority.

(A) Agencies/entities, facilities and industry partners shall submit prevailing wage verification information, as required by §245.21 of this title (relating to Prevailing Wages and Non-displacement of Workers), to the Authority, through Authority staff the [PIE Program Specialist], within thirty working days of notification.

(B) Participating agencies/entities, facilities and industry partners shall submit proof of worker's compensation or equivalent, coverage to the Authority through the Authority staff [the PIE Program Specialist] within ten working days of notification.

§245.43. Public Access to Speak Before the Authority.

(a) The Oversight Authority shall provide a time, at every public meeting and shown on the agenda appearing in the Texas Register, to receive public comments.

(b) Persons wishing to appear before the Authority to speak on issues under the jurisdiction of the Authority shall complete a request, designed for this purpose and made available at the entrance

to the meeting area, and give the request to the Authority staff prior to the conclusion of the meeting.

§245.45. Policymaking and Management Responsibilities.

(a) Business requiring Authority action includes:

(1) rulemaking, including adoption of memoranda of understanding with other agencies where necessary;

(2) approval of budgets relating to the Private Sector Prison Industries Oversight Account;

(3) appointment of advisory committees;

(4) designation and un-designation of cost accounting centers.

(b) The authority to organize. manage, and supervise the daily operations of the business of the Authority is delegated to the management staff of the Authority. In carrying out this delegated authority, staff shall ensure adherence to all applicable statutes, rules, guidelines and regulations governing the Authority and the Private Sector Prison Industries Enhancement Program.

§245.47. Removal Provisions.

(a) It is ground for removal from the Authority that a member:

(1) does not have, at the time of taking office, the qualifications required by Texas Government Code, §497.052 (a);

(2) does not maintain. during service on the Authority, the qualifications required by Texas Government Code, §497.052 (a);

(3) is ineligible for membership under Texas Government Code, §497.052 (d) or §497.0521 (b) or (c);

(4) cannot, because of illness or disability. discharge the member's duties for a substantial part of the member's term; or

(5) is absent for more than half of the regularly scheduled Authority meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the Authority.

(b) If the management staff of the Authority has knowledge that a potential ground for removal exists, the management staff of the Authority shall notify the Presiding Officer, in writing, of the potential ground. The Presiding Officer shall then notify the Governor and the Attorney General that a potential ground for removal exists.

(1) If the potential ground for removal involves the Presiding Officer, the management staff of the Authority shall notify the next highest ranking Officer of the Authority who shall notify the Governor and the Attorney General that a potential ground for removal exists.

(2) Members, absent for more than one half of the scheduled meetings shall submit in writing the reason for their absence to the Presiding Officer.

(3) The Presiding Officer shall submit the member's excuse to the Authority for a vote either to excuse or not excuse the absences.

(c) The management staff of the Authority shall provide to members of the Authority and to Agency employees, as often as necessary, information regarding the requirements for office or employment under this subchapter including, information regarding a person's responsibilities under applicable laws relating to standards of conduct for State Officers and employees.

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 May 8, 2000.

TRD-200003198
Carl Reynolds
General Counsel
Private Sector Prison Industries Oversight Authority
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 406-5750

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 3. TEXAS WORKS

Subchapter G. RESOURCES

40 TAC §3.704

The Texas Department of Human Services (DHS) proposes an amendment to §3.704, concerning types of resources, in its Texas Works chapter.

The purpose of the amendment is to exempt money in the Texas Tomorrow Fund as a resource for TANF and Medical Programs for Families and Children.

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 that families who save for their childrens' college education will not have to sacrifice those childrens' future access to post secondary education in order to have access to health care or temporary cash assistance during times of unemployment. There will be no effect on large, small, or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Editing Unit-210, 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 amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which authorizes the department

to administer financial 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, §§31.001- 31.0325 and §§32.001-32.042.

§3.704. Types of Resources.

(a) Temporary Assistance for Needy Families (TANF). The following are countable resources in TANF:

(1) Individual retirement accounts (IRAs). The Texas Department of Human Services (DHS) [~~DHS~~] counts IRAs as resources, even if there is a penalty for early withdrawal. DHS deducts the early withdrawal penalty and counts the remainder as a resource;

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

(b) Temporary Assistance for Needy Families (TANF). Exclusions from resources in TANF are:

(1)-(16) (No change.)

(17) Texas Tomorrow Fund. DHS exempts money in the Texas Tomorrow Fund.

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

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

Filed with the Office of the Secretary of State, on May 4, 2000.

TRD-200003145
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 438-3108

♦ ♦ ♦

Chapter 4. MEDICAID PROGRAMS– CHILDREN AND PREGNANT WOMEN

Subchapter A. ELIGIBILITY REQUIREMENTS

40 TAC §4.1006

The Texas Department of Human Services (DHS) proposes an amendment to §4.1006, concerning requirements for application, in its Medicaid Programs-Children and Pregnant Women chapter.

The purpose of the amendment is to exempt money in the Texas Tomorrow Fund as a resource for TANF and Medical Programs for Families and Children.

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 that families who save for their childrens' college education will not have to sacrifice those childrens' future access to post secondary education in order to have access to health care or temporary cash assistance during times of unemployment. There will be no effect on large, small, or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Editing Unit-210, 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 amendment is proposed under the Human Resources Code, Title 2, Chapters 22, and 32, which authorize 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, §§31.001-31.0325, and §§32.001-32.042.

§4.1006. Requirements for Application.

To be eligible for the Medicaid Programs for Children and Pregnant Women (CPW) Program, clients must meet the following requirements.

(1) Citizenship. Citizenship requirements for CPW applicants are the same as requirements for Temporary Assistance for Needy Families (TANF) applicants outlined in the Texas Department of Human Services' (DHS's) [~~DHS's~~] TANF rules in Chapter 3 of this title (relating to Income Assistance Services).

(2) Resources. Resource limits and types of countable and exempt resources for CPW are the same as those outlined in DHS's TANF rules, with the following exceptions:

(A) (No change.)

(B) The food stamp resource policy for households with no members 60 or over is applied when determining eligibility for children under six and children six or older born on or after October 1, 1983. Exception: DHS follows the TANF resource policy for loans and Texas Tomorrow Funds.

(C)-(F) (No change.)

(3)-(9) (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 May 4, 2000.

TRD-200003146
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 438-3108

♦ ♦ ♦

Part 2. TEXAS REHABILITATION COMMISSION

Chapter 101. GENERAL RULES

40 TAC §101.19

The Texas Rehabilitation Commission (TRC) proposes an amendment to §101.19, concerning functions of the board. The section is being amended to conform to amendments to enabling legislation for the Health and Human Services Commission and the Texas Rehabilitation Commission.

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

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to conform to amendments to enabling legislation for the Health and Human Services Commission and the Texas Rehabilitation Commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

§101.19. Functions of the Board.

[~~The function of the board is to decide policy for the commission. The board does not engage in the daily operations of the commission. The commissioner administers the daily operations of the commission.~~]

(a) The functions of the board include:

(1) providing concurrence with employment of the TRC Commissioner by the Commissioner of Health and Human Services;

(2) providing concurrence with discharge of the TRC Commissioner by the Commissioner of Health and Human Services;

(3) exercising the authority provided by law to adopt policies and rules governing the delivery of services to persons who are served by the Commission and the rights and duties of persons who are served or regulated by the Commission;

(4) delegating to the TRC Commissioner, or to a person acting as Commissioner in the Commissioner's absence, any power or duty imposed on the board or Commission by law except that the board may not delegate the power to adopt rules ; the delegation of any power or duty must be in writing, and must be adopted by the board in a public meeting;

(5) developing and implementing policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the Commissioner and staff of the Commission;

(6) entering into a memorandum of understanding with the Commissioner of Health and Human Services that clearly defines the policymaking authority of the board and the operational authority of the Commissioner of Health and Human Services;

(7) defining jointly with the Commissioner of Health and Human Services, specific performance objectives to be fulfilled by the TRC Commissioner in accordance with §531.055, Government Code;

(8) considering the evaluation of the TRC Commissioner in a meeting of the board and taking necessary action, if any, not later than 90 days after the date of receipt of the evaluation.

(b) The board operates as a Committee of the Whole, except for the three member Audit Committee.

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 May 8, 2000.

TRD-200003201
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 424-4050

♦ ♦ ♦

Part 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

Chapter 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions. The amendment will add definitions for terms which are used in the rules, but which are not defined.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terms used in the OT rules. 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 proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§362.1. Definitions.

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

(1)-(9) (No change.)

(10) Complete Renewal–Contains renewal fee, [~~continuing education record card (if applicable),~~] home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly and supervision log (if applicable).

(11)-(22) (No change.)

(23) Health Care Condition-See Medical Condition.

(24) [~~(23)~~] Investigation Committee–Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(25) [~~(24)~~] Investigator–The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(26) [~~(25)~~] Jurisprudence Examination–An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination [~~with multiple choice or true-false questions~~] made up of multiple choice and/or true-false questions. The passing score is 70%.

(27) [~~(26)~~] License–Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(28) [~~(27)~~] Licensed Occupational Therapist (LOT)–A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.

(29) [~~(28)~~] Licensed Occupational Therapy Assistant (LOTA)–A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.

(30) [~~(29)~~] Medical Condition–A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status Synonymous with the term health care condition [~~where prudence and custom require the services of a physician~~].

(31) [~~(30)~~] Monitored Services–The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.

(32) [~~(31)~~] NBCOT (formerly AOTCB)–National Board for Certification in Occupational Therapy (formerly American Occupational Therapy Certification Board).

(33) [~~(32)~~] Non-Medical Condition–A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(34) [~~(33)~~] Occupational Therapist (OT)–A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(35) [~~(34)~~] Occupational Therapist, Registered (OTR)–An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(36) [~~(35)~~] Occupational Therapy–The use of purposeful activity or intervention to achieve functional outcomes. Achieving functional outcomes means to develop or facilitate restoration of the highest possible level of independence in interaction with the environment. Occupational Therapy provides services to individuals limited by physical injury or illness, a dysfunctional condition, cognitive impairment, psychosocial dysfunction, mental illness, a developmental or learning disability or an adverse environmental condition, whether due to trauma, illness or condition present at birth. Occupational therapy services include but are not limited to:

(A) The evaluation/assessment, treatment and education of or consultation with the individual, family or other persons;

(B) interventions directed toward developing, improving or restoring daily living skills, work readiness or work performance, play skills or leisure capacities;

(C) intervention methodologies to develop restore or maintain sensorimotor, oral-motor, perceptual or neuromuscular functioning; joint range of motion; emotional, motivational, cognitive or psychosocial components of performance.

(37) [~~(36)~~] Occupational Therapy Assistant (OTA)–A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(38) [~~(37)~~] Occupational Therapy Plan of Care–A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(39) [~~(38)~~] OT Aide or OT Orderly–A person who aids in the practice of occupational therapy and whose activities require on-the-job training and close personal supervision by an OTR, LOT, COTA or LOTA.

[~~(39) Physician–An individual licensed by the Texas State Board of Medical Examiners, e.g., Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.).~~]

(40)-(47) (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 May 5, 2000.

TRD-200003157
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-6900

♦ ♦ ♦

Chapter 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §367.1, Continuing Education. The amendment will set a time frame for retention of proof of continuing education documentation

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be added assurance that as a result of enforcing the rule there will be greater administrative efficiency and a reduction in confusion in reference to the random audit process. 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 proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§367.1. Continuing Education

(a) The Act, §5(A), mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. The Executive Council staff will conduct, at least yearly, an audit of a randomly drawn sample of licensees to determine compliance with continuing education rules. Failure to maintain accurate documentation, or failure to respond to a request to submit documentation for an audit, may result in disciplinary action by the board. The audit results will be reported to the board.

(1) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(2) Continuing Education Documentation must be maintained for two years from the date of the last renewal for auditing purposes.

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

(d) Continuing education credit may be earned in the following manner:

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

(5) Development of publications, media materials or research/grant activities. A request to receive credit for this category must be submitted in writing to the Coordinator of Occupational Therapy no later than 60 days before the current license expiration date. The request must include a description of the activity/course, the sponsoring group, its direct relevance to the occupational therapy profession, and the number of hours to complete it. (Any publication, media materials, or research or grant activities can be counted only once per licensee). 10 hours;

(6)-(7) (No change.)

(e) (No change.)

(f) [~~Definitions for continuing education rules.~~] Continuing education documentation includes, but is not limited to, final official transcripts, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, and official correspondence from the Executive Council or board approving requested credits.

(1) The continuing education record card (blue card) will no longer be accepted as proof of continuing education activities effective December 1, 2001.

(2) Documentation must identify the licensee by name and license number, and must include the date and title of the course, the signature of the authorized signer, and the number of CEUs or contact hours awarded for the course.

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 May 5, 2000.

TRD-200003158
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-6900

♦ ♦ ♦

Chapter 372. PROVISIONS OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning Provision of Services. The amendment will reflect a change made to the Act, which allows OTRs and LOTs to accept referrals from all qualified health care providers.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater access to occupational therapy services. 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 proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, this amended section affects Subchapter H, Chapter 454 of the Occupations Code.

§372.1. Provision of Services

(a) Referral. Occupational therapists may accept referral from all qualified licensed health care professionals who within the scope of licensure are authorized to refer for healthcare services. This includes but is not limited to dentists, chiropractors, and podiatrists.

(1) Consultation, monitored services, screening,and evaluation for need of services may be provided without a referral [~~from a physician~~].

(2) Occupational therapy for non-medical conditions (refer to §362.1 of this title (relating to Definitions)) does not require a [~~physician~~] referral. However, a [~~physician~~] referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(3) The provision of direct treatment by an OTR, LOT, COTA or LOTA for medical conditions requires a referral [~~from a physician licensed by the Texas State Board of Medical Examiners to practice in the state of Texas~~]. A referral may be an oral or written order to initiate services. If an oral referral is received, it must be followed by a written order signed by the referral source [~~physician~~] requesting the services.

(4) An oral referral for evaluation and/or treatment [~~from a licensed physician~~] must be received and documented by a licensed health care provider.

(5) (No change.)

(b)-(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 May 5, 2000.

TRD-200003159
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: June 18, 2000
For further information, please call: (512) 305-6900

♦ ♦ ♦

WITHDRAWN RULES

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

TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter A. GENERAL PROVISIONS

16 TAC §25.4

The Public Utility Commission of Texas has withdrawn from consideration a proposed amendment to §25.4, which appeared in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9733).

Filed with the Office of the Secretary of State on May 1, 2000.

TRD-200003070
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 1, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter A. GENERAL PROVISIONS

16 TAC §26.4

The Public Utility Commission of Texas has withdrawn from consideration a proposed amendment to §26.4, which appeared in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9734).

Filed with the Office of the Secretary of State on May 1, 2000.

TRD-200003071
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 1, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

Subchapter P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.420

The Public Utility Commission has withdrawn from consideration a proposed amendment to §26.420, which appeared in the November 26, 1999, issue of the *Texas Register* (24 TexReg 10462).

Filed with the Office of the Secretary of State on May 4, 2000.

TRD-200003143
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 4, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

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 10. COMMUNITY DEVELOPMENT

Part 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 162. TEXAS EXPORTERS LOAN FUND

10 TAC §162.1 - 162.10

The Texas Department of Economic Development (department) adopts the repeal of Chapter 162, §§162.1-162.10, Texas Exporters Loan Fund in its entirety, relating to the administration of the procedures for participation in the Texas Exporters Loan Fund. The repeal is adopted without changes as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1230).

The repeal is necessary because legislation authorizing the program provides that "the Department may not guarantee or make a loan under this section after August 31, 1997." Thus, agency review of this rule has found that the reason for the rules has ceased to exist.

No comments were received regarding the repeal.

The repeal is adopted pursuant to Government Code, §481.0044, which directs the governing board to adopt rules for the administration of the department and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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 May 5, 2000.

TRD-200003195
Robin Abbott
General Counsel
Texas Department of Economic Development
Effective date: May 25, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 936-0177

♦ ♦ ♦

Chapter 185. RULES FOR TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION REVENUE BOND PROGRAMS

10 TAC §185.2 - 185.4

The Texas Department of Economic Development (department) adopts amendments to §§185.2-185.4 of Chapter 185. Rules for Texas Small Business Industrial Development Corporation Revenue Bond Programs, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2238). The text will not be republished.

The department has the authority to issue single or composite issue bonds to qualified applicants who propose to acquire or construct a project for the specific purpose of leasing or selling the completed project to one or more small business concern(s) on terms and conditions prescribed by the corporation. The rules as adopted will update references to the Texas Department of Commerce and more accurately reflect current statutory language and department practices. Upon review of these rules the department finds that the reason for adoption continues to exist.

No comments were received regarding the proposed amendments.

The amendments are adopted pursuant to Government Code, §481.0044(a), which directs the Governing Board of the Department to adopt rules necessary for the administration of the Department, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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 May 5, 2000.

TRD-200003193
Robin Abbott
General Counsel
Texas Department of Economic Development
Effective date: May 25, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 936-0177

♦ ♦ ♦

Chapter 197. PRIVATE DONATIONS

10 TAC §197.2, §197.7

The Texas Department of Economic Development (department) adopts amendments to Chapter 197, §197.2 and §197.7 relating to Private Donations, without changes to the proposed text as

published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1230). The text will not be republished.

The department has the authority to accept private donations pursuant to Government Code, §481.023(a)(3). These donations can have a significant impact on the department's success in stimulating economic development for the State of Texas. The rules as amended specifically address donated airline tickets in response to a State Auditor recommendation and clarify that state employees must follow all state laws and regulations as well as agency policies related to the use of donated assets.

No comments were received regarding the amendments.

The amendments are adopted pursuant to Government Code, §481.0044(a), which directs the governing board of the department to adopt rules necessary for the administration of the department, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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 May 5, 2000.

TRD-200003194
Robin Abbott
General Counsel
Texas Department of Economic Development
Effective date: May 25, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 936-0177

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 3. OIL AND GAS DIVISION

16 TAC §3.1, §3.58

The Railroad Commission of Texas (Commission) adopts amendments to §3.1, relating to Organization Report; Retention of Records; Notice Requirements, with changes, and adopts §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports, without changes to the versions published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 1928). The amendments, in part, implement Senate Bill 639, 75th Regular Session, (Texas Natural Resources Code §91.114), to assist the Commission in cross-referencing operators who may be prohibited from conducting operations subject to the jurisdiction of the Commission because of outstanding administrative or civil enforcement action. The amendments require individual licensees to submit social security numbers as required by the Family Code to aid in child support enforcement. Safeguards are in place to protect the confidentiality of this information. The amendments also provide for the suspension or revocation of an organization report containing materially false information. Further, the amendments require organizations that file for bankruptcy to notify the Commission within 72 hours by sending a notice to the Enforcement Section of the Office of General Counsel. All bankruptcy-related notices shall be sent to that section. The amendments allow permits to be issued in certain prescribed circumstances without an entity having to possess an active organization report.

The Texas Oil and Gas Association (TXOGA) filed comments urging the following changes to §3.1: (1) allow officers, directors and other persons of ownership or control of organizations the option to submit as identification either a driver's license, a Texas State Identification Card, or a social security number; (2) allow officers or directors of publicly traded corporations registered with the United States Securities and Exchange Commission the additional option of satisfying the identification requirement by submitting their full legal name; and (3) delete the requirement for organizations, as a condition of obtaining approval of their organization reports, to comply with registration requirements of the Secretary of State and the taxation requirements of the Comptroller of Public Accounts.

The Commission agrees with the first recommended change which is found in §3.1(a)(4)(C)(ii) because it gives the regulated community more options to supply the necessary identification of officers and directors while not compromising the Commission's ability to identify those individuals. The Commission disagrees with the second recommended change to allow certain officers and directors to submit only their name because such information is insufficient to provide the certainty of identification necessary for the proper administration of §91.114 of the Texas Natural Resources Code. The Commission disagrees with the third recommended change to do away with the requirement that organizations demonstrate that they have complied with the registration requirements of the Secretary of State and the taxation requirements of the Comptroller of Public Accounts. This requirement is consistent with state statutes requiring foreign organizations - corporations, limited partnerships and limited liability companies - to register in order to legally conduct business in Texas. Additionally, it is consistent with the Business Corporation Act which prohibits state agencies from granting permits to corporations which are delinquent in paying corporate franchise taxes. To allay the expressed concern of TXOGA that the existence of a tax dispute would bar approving an organization report, language is added to §3.1(f) to expressly state that such a circumstance would not have that effect.

The Commission simultaneously readopts these rules, with the amendments, in accordance with Tex. Gov't Code, §2001. The agency's reasons for adopting these rules continue to exist. The notice of proposed review was filed with the *Texas Register* concurrently with this proposal and published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 2165).

The Commission adopts the amendments under Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under §81.051; Texas Natural Resources Code, §85.161-7, which authorizes the Commission to require, administer, and cancel certificates of compliance; Texas Natural Resources Code, §91.114, which authorizes the Commission to accept, reject, or revoke reports filed with the Commission; and Texas Natural Resources Code, §91.142 which authorizes the Commission to require business entities to file organization reports.

Texas Natural Resources Code §§81.052, 85.041, 85.042, 85.161-7, 85.201, 85.202, 91.114, and 91.142 are affected by the adopted amendments.

Issued in Austin, Texas, on May 2, 2000.

§3.1. Organization Report; Retention of Records; Notice Requirements.

(a) Filing requirements.

(1) Except as provided under subsection (d) of this section, no organization, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the commission shall perform such operations without having on file with the commission an approved organization report and financial security as required by Texas Natural Resources Code §§91.103-91.1091. Operations within the jurisdiction of the commission include, but are not limited to, the following:

(A) drilling, operating, or producing any oil, gas, geothermal resource, brine mining injection, fluid injection, or oil and gas waste disposal well;

(B) transporting, reclaiming, treating, processing, or refining crude oil, gas and products, or geothermal resources and associated minerals;

(C) discharging, storing, handling, transporting, reclaiming, or disposing of oil and gas waste, including hauling salt water for hire by any method other than pipeline;

(D) operating gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance or repressurizing plants, or recycling plants;

(E) recovering skim oil from a salt water disposal site;

(F) nominating crude oil;

(G) operating a directional survey company;

(H) cleaning a reserve pit;

(I) operating a pipeline;

(J) operating as a cementer approved for plugging wells; or

(K) operating an underground hydrocarbon or natural gas storage facility.

(2) The commission will notify organizations that perform operations not included in paragraph (1)(A)-(K) of this subsection of any additional activities subject to the jurisdiction of the commission which require the filing of the organization report. Such notification will make the provisions of this section applicable to such activities.

(3) Each organization performing activities subject to the jurisdiction of the commission must maintain a current organization report with the commission until all duties, obligations, and liabilities incurred pursuant to commission rules, the Natural Resources Code, Titles 3 (Subtitles A, B, C, and Chapter 111 of Subtitle D) and 5, and the Water Code, Chapters 27 and 29, are fulfilled.

(4) The organization report shall contain the following information:

(A) the name, street address, mailing address, telephone number, and emergency after-hours telephone number of the organization;

(B) the plan of the business organization;

(C) for each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization:

(i) that entity's or individual's full legal name, the name(s) under which such entity or individual conducts business in the State of Texas, and all assumed names;

(ii) the following:

(I) if the entity is an individual, his or her social security number. Any individual who does not have a valid social security number shall submit, at that person's option, either his or her valid driver's license or Texas State Identification number;

(II) if the entity is not an individual, the name and, at that person's option, either the valid driver's license, social security, or Texas Identification number of each officer, director, or other person, who, under Texas Natural Resources Code, §91.114, holds a position of ownership or control of the organization, or an active P-5 number for that entity. All controlling entities connected to an organization which are not individuals shall provide the identification of the individuals in ownership or control of those entities.

(iii) a street address different than that of the organization; and

(iv) if different from the mailing address of the organization, a mailing address;

(D) if a foreign or nonresident organization, the name and street address of a resident agent.

(E) the name of any non-employee agent that the organization authorizes to act for the organization in signing Oil and Gas Division certificates of compliance which initially designate the operator or change the designation of the operator. Organizations may designate non-employee agents to execute subsequent organization reports. That designation shall be authorized by the organization and not by a non-employee agent.

(5) Any organization may designate a resident agent with a street address different than that of the organization in place of submitting the street addresses of the three (if applicable) primary controlling entities of the organization. Any foreign or nonresident organization identified in paragraph (1) of this subsection shall designate and maintain a resident agent upon whom may be served any process, notice, or demand required or permitted by law to be served upon such entity by or on behalf of the commission. Failure of such organization to designate and maintain a resident agent will render the organization report invalid. (Reference Order Number 20-60,617, effective January 1, 1971.)

(6) Failure by any organization identified in paragraph (1) of this subsection to answer any subpoena, commission to take deposition, or directive to appear at a hearing served upon such organization by or on behalf of the commission will render the organization report invalid.

(7) An organization shall refile an organization report annually according to the schedule assigned by the commission. Prior to the filing date, the commission shall mail notification and information to each organization for update of the organization report file. An organization shall file an amended organization report within 15 days after a change in any information required to be reported in the organization report. Only address changes may be made by letter.

(8) The commission shall meet any requirement under statute or commission rule for an order to be sent or notice to be given by the commission to an organization by mailing the item to the organization's mailing address shown on the most recently filed organization report or the most recently filed letter notification of

change of address. Notices sent by regular first-class mail shall be presumed to have been received if, upon arrival of the deadline for any response to the notice, the wrapper containing the notice has not been returned to the commission. Any commission action or proceeding for which notice is required shall go forward on the basis of the notice provided under this subsection, whether or not actual notice has been received. Service of notices and orders sent by certified mail is effective upon:

(A) acceptance of the item by any person at the address;

(B) initial failure to claim or refusal to accept the item by any person at the address prior to its eventual return to the commission by the United States Postal Service; or

(C) return of the item to the commission by the United States Postal Service bearing a notation such as "addressee unknown," "no forwarding address," "forwarding order expired," or any similar notation indicating that the organization's mailing address shown on the most recently filed organization report or address change notification letter is incorrect.

(9) An organization may also designate to the commission in writing a specified address for all commission correspondence relating to a particular district. If designated by an operator, this specified address shall be used in lieu of the organization address for any notices, other than hearing notices, pertaining to that district.

(10) The commission may return, unapproved, to the organization address an organization report which is submitted to the commission not fully completed according to the report's written instructions and not timely corrected. In the event that the commission returns an organization report, all submitted financial assurances shall remain non-refundable. If an organization report approved by the commission is found to contain information that was materially false at the time it was submitted for approval, the commission may suspend or revoke the organization report after notice and opportunity for hearing.

(b) Record requirements. All entities who perform operations which are within the jurisdiction of the commission shall keep books showing accurate records of the drilling, redrilling, or deepening of wells, the volumes of crude oil on hand at the end of each month, the volumes of oil, gas, and geothermal resources produced and disposed of, together with records of such information on leases or property sold or transferred, and other information as required by commission rules and regulations in connection with the performance of such operations, which books shall be kept open for the inspection of the commission or its representatives, and shall report such information as required by the commission to do so.

(c) Time frame. All organizations shall keep copies of records, forms, and documents which are required to be filed with the commission, along with the supporting documents referred to in subsection (b) of this section, for a period of three years, or longer if required by another commission rule, and any such copies may be disposed of at the discretion of such entities after the original records, forms, and documents have been on file with the commission for the required period, except that particular documents shall be retained beyond the required period and until the resolution of pending commission regulatory enforcement proceedings if the documents contain information material to the determination of any issues therein. All records, forms, and documents required to be filed with the commission shall be filed in the same name, exactly as it appears on the organization report.

(d) Issuance of permits to organizations without active organization reports.

(1) Notwithstanding contrary provisions of this section, the commission or its delegate may issue a permit to an organization or individual that does not have an active organization report or does not ordinarily conduct oil and gas activities when the issuance of such a permit is determined to be necessary to implement a compliance schedule, or to remedy circumstances or a violation of a commission rule, order, license, permit, or certificate of compliance relating to safety or the prevention of pollution. For permits issued under this subsection, the commission may impose special conditions or terms not found in like permits issued pursuant to other commission rules. Any organization or individual who requests such a permit shall file an organization report and any other required forms for record- keeping purposes only. The report or form shall contain all information ordinarily required to be submitted to the commission.

(2) This section shall not limit the commission's authority to plug or to replug wells or to clean up pollution or unpermitted discharges of oil and gas waste.

(e) Organizations that file for bankruptcy shall provide written notice to the commission within 72 hours by submitting the notice to the Enforcement Section of the Office of General Counsel. All bankruptcy-related notices sent to the commission shall be submitted in writing to that section.

(f) Organization reports shall not be approved unless the organization has complied with the state registration requirements of the Secretary of State and the taxation requirements of the Comptroller of Public Accounts. A tax dispute with the Comptroller of Public Accounts shall not be a basis for disapproving an organization report.

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 May 2, 2000.

TRD-200003075
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: May 22, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 475-1295

♦ ♦ ♦

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.401, 26.403, 26.404, 26.410, 26.413, 26.414, 26.415, 26.417, 26.418

The Public Utility Commission of Texas adopts amendments to §26.401, §26.403, §26.404, §26.413, §26.414, §26.415, §26.417, and §26.418 and new §26.410 relating to the Texas

Universal Service Fund (TUSF). The amendments are adopted with changes to the proposed text as published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10462). The new rule and amended rules are necessary as a result of Senate Bill 560 (SB 560), Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210 (Vernon) (to be codified as amendments to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§56.021, 56.023, 56.024, 56.026, 56.028, 56.071, 56.072). The amendments and new rule are adopted under Project Number 21163. The commission will not adopt amendments to §26.420 as published in the *Texas Register*. The commission will republish §26.420 to make changes further clarifying the administration of the TUSF.

The commission received comments on the proposed new and amended rules from AT&T Communications of the Southwest, Inc. (AT&T), MCI WorldCom (MCIW), Southwestern Bell Telephone (SWBT), and Texas Statewide Telephone Cooperative, Inc. (TSTCI).

Commentors in favor of adoption of the rules are AT&T, MCIW, and TSTCI. SWBT is not in favor of the adoption of the rules.

TSTCI has no problems with the rules as published.

Section 26.403 established financial guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve high cost areas. Section 26.403(e) established the criteria for determining the amount of support an ETP will receive under the Texas High Cost Universal Service Plan (THCUSP). AT&T recommends that §26.403(e)(3)(D) be deleted and instead insert the word "partially" at the appropriate place in §26.403(e)(3)(C). AT&T contends that the statute mentions services "partially" and "solely" provisioned through the use of unbundled network elements (UNEs) in a single breath and refers to a single allocation method.

The commission agrees with AT&T's recommendation that the allocation methods be clarified. The commission modifies §26.403(e)(3)(C) appropriately.

Section 26.403(e)(3) sets forth the calculations for THCUSP payments. Subsection (e)(3)(C) sets forth the calculation adjustments made when service is provided solely or partially through the purchase of UNEs. Section 26.420(g)(3)(B) is related to §26.403(e)(3)(C) in that it discusses TUSF disbursement reductions applicable when service is provided solely or partially through the purchase of UNEs. AT&T states that §26.420(g)(3)(B) should refer to the commission decision in Docket Number 18515, instead of merely incorporating that decision by reference.

The commission agrees with AT&T's suggestion. However, the commission believes the change is more appropriately incorporated into §26.403. Therefore the commission incorporates into §26.403(e)(3)(C) the commission's decision in Docket Number 18515 regarding the allocation of support when service is provided either solely or partially through UNEs.

Section 26.410 implements the provisions of PURA §56.028. AT&T states that it is unaware of any other reasonable criteria, beyond PURA §56.028, that should be applied to further define the scope of the eligible High Cap services addressed in §26.410. AT&T states that the reimbursements for rate reductions supported under §26.410 should not duplicate discounts or other rate reductions supported through the educational percentage discount rate (e- rate) discounts in §26.216 relating to Educational Percentage Discount Rates (E-Rates). AT&T proposes that the extent that a discount to a tariffed rate is available under §26.216, TUSF support under §26.410 should be applied only to any remaining difference between the discounted rate and the lowest rate offered by a Chapter 58 incumbent local exchange carrier (ILEC), pursuant to PURA §56.028. Alternatively, AT&T suggests that the commission require a carrier to elect to receive support only under one of the two sections.

The commission agrees that to the extent a discount to a tariffed rate is available under §26.216 TUSF support under §26.410 should be applied only to any remaining difference between the discounted rate and the lowest rate offered by a Chapter 58 ILEC, pursuant to PURA §56.028. Therefore, §26.410(c), which addresses the terms of reimbursement, is modified appropriately.

AT&T also states that §26.410 may require a local exchange carrier (LEC) to establish rates below its costs, whereas, §26.141(e) and (f), relating to Distance learning, Information Sharing Programs, and Interactive Multimedia Communications, require service to be provided at cost based rates. To avoid problems with the conflicting language, AT&T suggests that carriers be required to state the basis on which they are establishing rates (statewide cost, customer specific cost, or by price comparison). At a minimum, AT&T urges the commission to establish some comparability between customers before allowing a small LEC to receive reimbursement for reducing its rates to a Chapter 58 company's customer-specific contract rate.

The commission agrees with AT&T's concern and modifies §26.410(d), which establishes the reporting requirements for ILECs receiving reimbursement for providing intraLATA interexchange high capacity service at reduced rates for entities described in PURA §58.253(a). The commission adds §26.410(d)(2) to require a small LEC, upon commission request, to designate the basis on which it is establishing rates.

Section 26.414 establishes the statewide Telecommunications Relay Service (TRS). Section 26.414(e) addresses the composition and responsibilities of the Relay Texas Advisory Committee (RTAC). AT&T recommends that §26.414(e)(1)(A) be revised because it is awkward. AT&T believes the language would be more understandable if revised to read: "(A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network."

The commission agrees and incorporates the modification.

Section 26.417 provides the requirements for the commission to designate telecommunications providers as ETPs to receive funds from the TUSF. Section 26.417(g) establishes the circumstances in which an ETP designation can be relinquished. SWBT argues that §26.417(g)(3)(A) and (B) inappropriately give the commission authority to eliminate or partially reduce an electing company's TUSF disbursements for reasons other than as specifically set forth in PURA §56.026(c)(1) and (c)(2). SWBT asserts that these two sections do not comply with PURA and therefore recommends that they be deleted from the rules. SWBT adds that these two sections rely on the quality of service rules under development in Project 19666, which as currently drafted, only apply to dominant certificated telecommunications utilities (DCTU). To ensure equality, the proposed quality of service rules should be amended to make sure that they apply either to all telecommunications providers or, at a minimum, to

any telecommunications provider that seeks to be designated as an ETP to receive TUSF support.

AT&T has no opposition to the amended §26.417(g)(3)(A) and new §26.417(g)(3)(B). AT&T states that SWBT's recommendation would allow SWBT to receive TUSF disbursements even if it were no longer qualified as an ETP and not offering local service to customers. AT&T believes the commission should support a more balanced and reasonable construction of PURA than that suggested by SWBT. AT&T opposes SWBT's suggestion that the quality of service rules be applied to all telecommunications providers. AT&T states that whatever justification may exist in the statute for treating all ETPs the same does not extend to all telecommunications providers generally.

The commission disagrees with SWBT's assertion that the only two criteria that allow the commission to eliminate or partially reduce an electing company's TUSF disbursements are those specifically set forth in PURA §56.026(c)(1) and (c)(2). The commission relies on PURA §56.023(a)(1) and (b) as its source of authority. PURA §56.023(a)(1) requires the commission to adopt eligibility criteria and review procedures. PURA §56.023(b) mandates that the eligibility criteria require that a telecommunications provider be in compliance with the commission's quality of service requirements.

The commission also modifies §26.417(f)(1)(B)(V) to update references to §23.61(c), (d) and (e) that were repealed and replaced by §§26.52, 26.53 and 26.54. This change conforms the rule to the same change already made in §26.417(c)(1)(D).

As regards SWBT's suggestion that the quality of service rules be amended to apply to all telecommunications providers, the commission does not believe this is the appropriate forum to make that specific modification. However, the commission notes that these TUSF rules, as amended, apply the same service quality standards to all ETPs, as suggested by SWBT, in a manner consistent with AT&T's comments.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and PURA §56.021, which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021, 56.023, 56.024, 56.026, 56.028, 56.071, 56.072, and 56.1085.

§26.401. Texas Universal Service Fund (TUSF).

(a) Purpose. The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse qualifying entities for revenues lost as a result of providing Lifeline and Tel-assistance services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications devices and services for the disabled; and reimburse the Texas Department of Human Services, the Texas Department of Housing and Community Affairs, the Texas Department for the Deaf and Hard of Hearing, the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).

(b) Programs included in the TUSF.

(1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));

(2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);

(3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);

(4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));

(5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);

(6) Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);

(7) Section 26.413 of this title (relating to Tel-Assistance Service);

(8) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

(9) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP);

(10) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(11) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

(12) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF)).

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Benchmark - The per-line amount above which THCUSP support will be provided.

(2) Business line - The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(3) Eligible line - A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(4) Eligible telecommunications provider (ETP) - A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(5) Residential line - The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) dual party relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline and tel-assistance services.

(2) Subsequent determinations.

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from February 10, 1998.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3) of this subsection.

(1) Determining base support amount available to ETPs. The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.

(A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.

(B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. The benchmarks for both residential and single-line businesses will be calculated using the statewide average revenue per line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

(i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.

(ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single-line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.

(C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.

(2) Proceedings to determine THCUSP base support.

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from February 10, 1998.

(ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.

(B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.

(3) Calculating amount of THCUSP support payments to individual ETPs. After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

(B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.

(i) Solely through UNEs.

(I) USF cost > (UNE rate + retail cost additive (R)) >revenue benchmark (RB). USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities-based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or

(II) USF cost > RB > (UNE rate + R). The ILEC would receive the difference between USF cost and RB. In this case, where USF cost > RB > (UNE rate + R), giving (USF cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost -RB) would minimize financial harm to the ILEC; or

(III) (UNE rate + R)> USF cost > RB. The ETP would receive the difference between USF cost and RB. Where (UNE rate + R)> USF cost > RB, giving (USF cost - RB) to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover (USF cost - RB) would minimize financial harm to the ETP.

(ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.

(f) Reporting requirements. An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) information regarding the access lines on the ETP's network including:

(i) the total number of access lines on the ETP's network,

(ii) the total number of access lines sold as UNEs,

(iii) the total number of access lines sold for total service resale,

(iv) the total number of access lines serving end use customers, and

(v) the total number of eligible lines for which the ETP seeks TUSF support;

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

(C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.

(2) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(3) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(g) Review of THCUSP after implementation of federal universal service support. The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Eligible line - A residential line and a single-line business line over which an ETP provides the service supported

by the Small and Rural ILEC Universal Service Plan through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(2) Eligible telecommunications provider (ETP) - A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to the Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Small incumbent local exchange company (ILEC) - An ILEC that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(4) Test year - The fiscal year ending in 1997.

(c) Application.

(1) Small or rural ILECs. This section applies to small ILECs and rural ILECs, as defined in subsection (b) of this section and/or §26.5 of this title (relating to Definitions), that have been designated ETPs by the commission pursuant to §26.417 of this title.

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)).

(e) Small and Rural ILEC Universal Service Plan monthly per-line support. A monthly per-line amount of support for each small or rural ILEC study area shall be determined in a one-time calculation using data from such small or rural ILEC's test year that has been audited by an independent auditor in conformance with generally accepted accounting principles (GAAP).

(1) Calculation of the monthly per-line amount of support for each small or rural ILEC. The toll pool amounts and access/toll revenue reductions determined in accordance with subparagraphs (A) and (B) of this paragraph shall be added together. To calculate the per-line amount of support, the resulting sum will then be divided by the average number of eligible lines served by such small or rural ILEC during the test year. To calculate the monthly per-line amount of support, the result shall be divided by 12.

(A) Toll pool amounts. The toll pool amount for a small or rural ILEC shall be determined by subtracting the actual toll billed by the small or rural ILEC during the test year from its toll pool revenue requirement for the for the test year, as certified by the TUSF administrator.

(B) Access/toll revenue reduction. At the time this section is implemented, a small or rural ILEC may reduce carrier common line (CCL), residual interconnection charge (RIC), and/or intraLATA toll rates. Upon commission approval a small or rural ILEC may recover a reasonable amount of the difference between the previous rates and the new rates, computed on the basis of minutes of use in the test year. This amount is calculated by multiplying the difference between the previous rates and the new rates by the test year minutes of use.

(2) Freeze on support levels. The per-line amount of support calculated in paragraph (1) of this subsection shall remain constant as long as the small or rural ILEC is eligible to receive funds pursuant to this section.

(3) Switched Access Service Rate Reductions. To the extent that the disbursements from the universal service fund under PURA §56.021(1) for small and rural local exchange companies are used to decrease the implicit support in intraLATA toll and switched access rates, the decrease shall be made in a competitively neutral manner.

(f) Small and Rural ILEC Universal Service Plan support payments to ETPs. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.

(1) Payments to small or rural ILEC ETPs. The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) Payments to ETPs other than small or rural ILECs. The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report the total number of eligible lines served by the ETP in its study area to the TUSF administrator on a monthly basis.

(2) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(3) Other reporting requirements. An ETP shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements to the TUSF.

(h) Review of Small and Rural ILEC Universal Service Plan after implementation of federal universal service support. Within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas, the commission shall initiate a project to investigate a mechanism by which ETPs receiving support pursuant to this section would transition to receiving support pursuant to §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP).

§26.410. Universal Service Fund Reimbursement for Certain IntraLATA Service.

(a) Purpose. The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.028.

(b) Applicability. Under this section, an incumbent local exchange company (ILEC) that is not an electing company under PURA Chapters 58 and 59 may request reimbursement through the Texas Universal Service Fund (TUSF) when providing intraLATA interexchange high capacity (1.544 Mbps) service at reduced rates for entities described in PURA §58.253(a).

(c) Reimbursement. Reimbursement shall be retroactive to the date on which a non-electing ILEC's tariff containing the reduced rate was approved by the commission, or September 1,

1999, whichever is later. The amount of reimbursement shall be the difference between the ILEC's tariffed rate for that service, less any applicable discounts, and the lowest rate for that service offered by any local exchange company electing incentive regulation under PURA Chapter 58, multiplied by the number of eligible lines. The non- electing ILEC's rate for purposes of reimbursement shall be the rate effective on January 1, 1998. A non-electing ILEC without a tariffed rate on January 1, 1998, shall use the rate most recently approved by the commission.

(d) Reporting requirements.

(1) An ILEC awarded support under this section shall provide the TUSF administrator:

(A) the number of lines eligible for support; and

(B) the ILEC's tariffed rate, as of January 1, 1998, for the service; and

(C) the lowest rate offered for the service by any local exchange company electing incentive regulation under PURA Chapter 58.

(2) Upon request of the commission, the ILEC awarded support under this section shall designate the basis on which it is establishing rates.

§26.413. Tel-Assistance Service.

(a) Application. This section applies to local exchange companies (LECs) as defined by §26.5 of this title (relating to Definitions). In addition, this section applies to telecommunications providers that receive TUSF support in accordance with the TUSF rules, and any reference to or requirement imposed on LECs in this section shall also apply to those telecommunications providers.

(b) Definition. The term "eligible consumer", when used in this section, shall mean that in order to be eligible for Tel-Assistance Service, the consumer must be a head of household and disabled, as determined by the Texas Department of Human Services (TDHS), or be 65 years of age or older; and have a household income at or below the poverty level, as reported annually by the United States Office of Management and Budget in the *Federal Register*.

(c) Provision of Tel-Assistance Service. Each LEC shall provide Tel-Assistance Service as provided in this section. A consumer eligible for Tel-Assistance Service also qualifies for Lifeline Service and Link Up Service as provided in §26.412 of this title (relating to Lifeline Service and Link Up Service Programs). Nothing in this section shall prohibit a person otherwise eligible to receive Tel-Assistance Service from obtaining and using telecommunications equipment or services designed to aid such person in utilizing qualifying telecommunications services.

(1) Rate reductions under Tel-Assistance Service.

(A) Each LEC shall provide Tel-Assistance Service to all eligible consumers within its certificated area in the form of a 65% reduction in the applicable tariff rate for the qualifying services provided.

(B) The reduction for local area calling usage shall be limited to an amount such that, together with the reduction for local exchange access service, the overall rate reduction does not exceed the comparable reduction applicable to flat rate service.

(2) Texas Universal Service Fund (TUSF) reimbursement. LECs providing Tel- Assistance Service to eligible consumers under this section are eligible for reimbursement from the TUSF of the lost revenue associated with the application of a 65% reduction in the applicable tariff rate for those accounts.

(d) Obligations of the consumer, TDHS, and the LEC.

(1) Consumer. Consumers may apply for Tel-Assistance Service by obtaining an application form from TDHS. Persons who are eligible for Tel-Assistance Service, but do not have telephone service at the time TDHS provides its eligibility list to LECs, are responsible for initiating a request for qualifying services from their serving LEC.

(2) TDHS. TDHS shall review the consumer's application form and shall determine if the consumer meets the eligibility criteria. TDHS shall provide each LEC with an initial list of persons eligible for Tel-Assistance Service and shall provide an updated list to each LEC on a semi-annual basis.

(3) LEC.

(A) The LEC shall provide Tel-Assistance Service to all eligible consumers identified by TDHS within its certificated area if the existing service of those consumers meets the qualifications set forth in subsection (b) of this section. The LEC shall identify those consumers on the TDHS list to whom it is providing telephone service and shall determine if the existing telephone service qualifies. Within 60 days after receipt of the list, the LEC shall begin reduced billing for those eligible consumers subscribing to qualifying services.

(B) If the existing telephone service does not qualify, the LEC shall advise the eligible consumer by direct mail of changes necessary to satisfy Tel- Assistance Service criteria. The LEC shall advise the eligible consumer by direct mail that persons choosing not to make necessary changes to their telephone service arrangements will not receive Tel-Assistance Service and that the eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Tel- Assistance Service, or for service order charges associated with transferring the account into Tel-Assistance Service. If the eligible consumer changes the existing telephone service to qualifying services or initiates new qualifying service, the LEC shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

(C) The LEC shall notify TDHS on a semi-annual basis of changes in the status of its Tel-Assistance Service consumers.

(e) Specific service exceptions for Tel-Assistance Service. No other local voice service may be provided to the dwelling place of a Tel-Assistance Service consumer, nor may single or party line optional extended area service, optional extended area calling service, foreign zone service or foreign exchange service be provided to a Tel-Assistance Service consumer.

(f) Retroactive prohibition for Tel-Assistance Service. Tel-Assistance Service shall not be available on a retroactive basis except for such instances in which the LEC failed to initiate reduced billing within the time frame established in subsection (d)(3)(A) of this section.

(g) Termination of Tel-Assistance Service. Consumer certification is provided by TDHS subject to annual renewal. Reduced billing will continue until such time as either the TDHS notifies the LEC that the consumer is no longer eligible or the consumer establishes telephone service arrangements that do not satisfy the qualifications for Tel- Assistance Service. After Tel-Assistance Service is established, if the recipient requests a change in telephone service arrangements such that the new arrangements do not meet the qualifications, before making such changes, the LEC shall advise the consumer by direct mail that the requested changes will result in re-

moval of the Tel-Assistance Service discount. If the consumer then chooses to have such changes made, the LEC shall terminate the discount at the time the change of service becomes effective.

(h) Reporting requirements for the provision of Tel-Assistance Service. LECs shall file monthly reports with the TUSF administrator detailing the lost revenues associated with the 65% discount applied to Tel-Assistance Service accounts. The LECs shall also file activity reports showing the total number of accounts transferred into and out of Tel- Assistance Service in the previous month and the total number of Tel-Assistance Service accounts at the end of the month.

(i) Tariff requirement. Each LEC shall file a tariff to implement Tel-Assistance Service in compliance with this section and with applicable law within 30 days of beginning to provide service. No other revision, addition, or deletion unrelated to Tel-Assistance Service shall be contained in the tariff.

§26.414. Telecommunications Relay Service (TRS).

(a) Purpose. The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech- impaired using specialized telecommunications devices and operator translations. Telecommunications relay service shall be provided on a statewide basis by one telecommunications carrier, except that the commission may contract with another vendor for a special feature in certain circumstances. Certain aspects of telecommunications relay service operations are applicable to local exchange companies and other telecommunications providers.

(b) Provision of TRS. TRS shall provide individuals who are hearing-impaired or speech- impaired with access to the telecommunications network in Texas equal to that provided to other customers.

(1) Components of TRS. TRS shall meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and further shall consist of the following:

(A) switching and transmission of the call;

(B) oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices;

(C) sufficient operators and facilities to meet the grade and quality of service standards established by the commission for TRS, including the operator answering performance standards listed in §26.54(c)(2)(A) and (D) of this title (relating to Service Objectives and Performance Benchmarks).

(D) appropriate procedures for handling emergency calls;

(E) confidentiality regarding existence and content of conversations;

(F) capability of providing sufficient information to allow calls to be accurately billed;

(G) capability of providing for technologies such as hearing carryover or voice carryover;

(H) operator training to relay the contents of the call as accurately as possible without intervening in the communications;

(I) operator training in American Sign Language and familiarity with the special communications needs of individuals who are hearing-impaired or speech- impaired;

(J) capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;

(K) capability of providing both inbound and outbound intrastate and interstate service;

(L) capability for carrier of choice; and

(M) other service enhancements approved by the commission.

(2) Conditions for interstate service. The TRS carrier shall not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS shall be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records shall be maintained for intrastate TRS and interstate TRS.

(3) Rates and charges. The following rates and charges shall apply to TRS:

(A) Local calls. The calling and called parties shall bear no charges for calls originating and terminating within the same toll-free local calling scope.

(B) Intrastate long distance calls. The TRS carrier shall discount its tariffed intrastate rates by 50% for TRS users.

(C) Access charges. Telecommunications providers shall not impose access charges on calls that make use of this service and which originate and terminate within the same toll-free local calling scope.

(D) Billing and collection services. Upon request by the TRS carrier, telecommunications providers shall provide billing and collection services in support of this service at just and reasonable rates.

(c) Contract for the TRS carrier.

(1) Selection. On or before April 1, 2000, the commission shall issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech- impaired in having access to a high quality and technologically-advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The commission's determination shall include evaluations of charges for the service, service enhancements proposed by the offerers, and technological sophistication of the network proposed by the offerers. The commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state.

(2) Location. The operator centers used to provide statewide TRS shall be located in Texas.

(3) Contract administration.

(A) Contract amendments. All recommendations for amendments to the contract shall be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically shall approve any amendment that will increase the cost of TRS.

(B) Reports. The TRS carrier(s) and telecommunications providers shall submit reports of their activities relating to the

provision of TRS upon request of the commission or the Relay Texas administrator.

(C) Compensation. The TRS carrier(s) shall be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:

(i) Reimbursement shall include the TRS costs that are not paid by the calling or the called party, except the TRS carrier shall not be reimbursed for the 50% discount set forth in subsection (b)(3)(B) of this section.

(ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.

(iii) The TRS carrier shall submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF shall make a disbursement in the approved amount.

(d) Special features for TRS.

(1) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:

(A) the feature will benefit the communication of persons with an impairment of hearing or speech;

(B) installation of the feature will be of benefit to the state; and

(C) the feature will make the relay access service available to a greater number of users.

(2) If the carrier selected to provide the telecommunications relay access service is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering;

(A) factors stated in subsection (c)(1) of this section;

(B) the past performance demonstrated capability and experience of the carrier.

(3) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(4) The commission's evaluation of a telecommunications carrier's proposal shall include the considerations listed in subsection (c)(1) of this section.

(e) Advisory Committee. The commission shall appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the specialized telecommunications assistance program, as specified by the Public Utility Regulatory Act (PURA) §56.111. The Relay Texas administrator shall serve as a liaison between the RTAC and the commission. The Relay Texas administrator shall ensure that the RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

(1) Composition. The commission shall appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. The RTAC shall be composed of:

(A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network;

(B) one deaf person recommended by the Texas Deaf Caucus;

(C) one deaf person recommended by the Texas Association of the Deaf;

(D) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(E) one hearing-impaired person recommended by the American Association of Retired Persons;

(F) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(G) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

(H) two representatives of telecommunications utilities, one representing a local exchange company and one representing a telecommunications carrier other than a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(I) two persons, at least one of whom is deaf, with experience in providing relay services, recommended by the Texas Commission for the Deaf; and

(J) two public members recommended by organizations representing consumers of telecommunications services.

(2) Conditions of membership. The term of office of each RTAC member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term. RTAC members shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(3) Responsibilities. The RTAC shall undertake the following responsibilities:

(A) monitor the establishment, administration, and promotion of the statewide TRS;

(B) advise the commission regarding the pursuit of services that meet the needs of individuals who are hearing-impaired or speech-impaired in communicating with other users of telecommunications services;

(C) advise the commission regarding issues related to the contract between the TRS carrier and the commission, including any proposed amendments to such contract;

(D) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding issues related to the specialized telecommunications assistance program, including devices or services suitable to meet the needs of persons with disabilities in communicating with other users of telecommunications services.

(4) Committee activities report. After each RTAC meeting, the Relay Texas administrator shall prepare a report to the commission regarding the RTAC activities and recommendations.

(A) The Relay Texas administrator shall file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

(i) the minutes of the meeting;

(ii) a memo summarizing the meeting; and

(iii) a list of items, recommended by the RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.

(B) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.

(5) Evaluation of RTAC costs and effectiveness. The commission shall evaluate the advisory committee annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with the RTAC, TRS, or the equipment distribution program shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

§26.415. Specialized Telecommunications Assistance Program (STAP).

(a) Purpose. The provisions of this section are intended to establish procedures for a specialized telecommunications assistance program and for reimbursement to vendors and service providers who submit vouchers issued under the program.

(b) Program responsibilities.

(1) Texas Commission for the Deaf and Hard of Hearing (TCDHH) responsibilities. TCDHH is responsible for:

(A) Adopting rules and procedures regarding the issuance of STAP vouchers to eligible individuals;

(B) Establishing a database containing sufficient information to enable the commission to verify the issuance of a particular STAP voucher; and

(C) Depositing amounts paid by eligible individuals for STAP vouchers into the Texas Universal Service Fund (TUSF).

(2) Commission responsibilities. The commission is responsible for:

(A) Adopting rules and procedures regarding the reimbursement to vendors for properly redeemed STAP vouchers;

(B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program ; and

(C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC), in accordance with the Public Utility Regulatory Act (PURA), §56.110 and §56.112.

(c) Program administration.

(1) Vendor and service provider registration. To facilitate the timely reimbursement of STAP vouchers, the TUSF administrator may specify that a vendor or service provider who accepts STAP vouchers shall register with the administrator by providing their name, contact person, address, telephone number, facsimile number (if available), and information sufficient to permit the administrator to reimburse the vendor or service provider by direct deposit rather than by check.

(2) Vendor or service provider reimbursement. A vendor or service provider who exchanges an STAP voucher for the purchase of approved equipment or services in accordance with the terms of the specialized telecommunications assistance program specified by TCDHH shall be eligible for reimbursement of the lesser of the face value of the STAP voucher or the actual price of the equipment or service.

(A) TUSF disbursements shall be made only upon receipt from the vendor or service provider of a completed STAP voucher and a receipt showing the actual price of the equipment or service exchanged for the STAP voucher.

(B) TUSF disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable, including investigation of whether the presentation of an STAP voucher represents a valid transaction for equipment or service under the STAP.

(C) The TUSF administrator shall ensure that reimbursement to vendors for STAP vouchers shall be issued within 45 days after the STAP voucher is received by the TUSF administrator.

(D) The commission may delay payment of a voucher to a distributor of devices or a service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the Texas Commission for the Deaf and Hard of Hearing issued the voucher until the dispute is resolved.

(E) The commission may provide that payment of the voucher is conditioned on the return of the payment if the device is returned to the distributor or if the service is not used by the person to whom the voucher was issued. The commission may provide an alternative dispute resolution process for resolving a dispute regarding the equipment or service provided.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) Purpose. This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) Requirements for establishing ETP service areas.

(1) THCUSP service area. THCUSP service area shall be based upon census block groups (CBGs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all CBGs that are wholly or partially contained within its certificated service area. An ETP must serve an entire CBG, or other geographic area as

determined appropriate by the commission, unless its certificated service area does not encompass the entire CBG, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) Criteria for designation of ETPs.

(1) Telecommunications providers. A telecommunications provider, as defined in §26.5 of this title (relating to Definitions), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area pursuant to subsection (c) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service and Link Up Service Programs) and §26.413 of this title (relating to Tel-Assistance Service); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) ILECs. If the LEC is an ILEC, as defined in §26.5 of this title, it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1).

(d) Designation of more than one ETP.

(1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) Proceedings to designate telecommunications providers as ETPs.

(1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

(2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application

complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in §26.5 of this title;

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

(VI) show that the applicant offers Lifeline, Link Up, and Tel- Assistance services in compliance with §26.412 and §26.413 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (c) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) Relinquishment of ETP designation. A telecommunications provider may seek to relinquish its ETP designation.

(1) Area served by more than one ETP. The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) Area where the relinquishing telecommunications provider is the sole ETP. In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

(3) Relinquishment for non-compliance. The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks) in that portion of its ETP service area.

(h) Auction procedure for replacing the sole ETP in an area. In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) Announcement of auction. Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) Bidding procedure. Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) Purpose. This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF). Only common carriers designated by the commission pursuant to 47 United States Code §214(e) (relating to Provision of Universal Service) as eligible for federal universal service support may qualify to receive universal service support under the FUSF.

(b) Service areas. The commission may designate eligible telecommunications carrier service areas according to the following criteria.

(1) Non-rural service area. To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an eligible telecommunications carrier.

(2) Rural service area. In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(c) Criteria for determination of eligible telecommunications carriers. A common carrier shall be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 Code of Federal Regulations §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(d) Criteria for determination of receipt of federal universal service support. In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (c) of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 Code of Federal Regulations §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(e) Designation of more than one eligible telecommunications carrier.

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one eligible telecommunications carrier in a service area so long as each additional carrier meets the requirements of subsection (b)(1) of this section and subsection (c) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an eligible telecommunications carrier a carrier that meets the requirements of subsection (b)(2) of this section and subsection (c) of this section if the commission finds that the designation is in the public interest.

(f) Proceedings to designate eligible telecommunications carriers.

(1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.

(2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring eligible telecommunications carrier shall file an application, within 30 days after the date of the purchase, to amend its eligible telecommunications carrier service area to include those geographic areas that are eligible for support.

(3) If an eligible telecommunications carrier receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its eligible telecommunications carrier designation to exclude from its designated service area those exchanges for which it was receiving support.

(g) Application requirements and commission processing of applications.

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936- 7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking eligible telecommunications carrier designation. A common carrier that seeks to be designated as an eligible telecommunications carrier shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an eligible telecommunications carrier;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c) to any consumer in the service area for which it seeks designation as an eligible telecommunications carrier;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an eligible telecommunications carrier;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking eligible telecommunications carrier designation and receipt of federal universal service support. A common carrier that seeks to be designated as an eligible telecommunications carrier and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low- income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 United States Code §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (b) of this section; and

(VI) if, in areas served by a rural telephone company, the eligible telecommunications carrier designation is consistent with the public interest.

(ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 Code of Federal Regulations Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 Code of Federal Regulations §54.400 and §54.401.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(E) Waiver. In the event that an otherwise eligible telecommunications carrier requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(h) Designation of eligible telecommunications carrier for unserved areas. If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 United States Code §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(i) Relinquishment of eligible telecommunications carrier designation. A common carrier may seek to relinquish its eligible telecommunications carrier designation.

(1) Area served by more than one eligible telecommunications carrier. The commission shall permit a common carrier to relinquish its designation as an eligible telecommunications carrier in any area served by more than one eligible telecommunications carrier upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) Area where the common carrier is the sole eligible telecommunications carrier. In areas where the common carrier is the only eligible telecommunications carrier, the commission may permit

it to relinquish its eligible telecommunications carrier designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an eligible telecommunications carrier; and

(B) commission designation of a new eligible telecommunications carrier for the service area or areas.

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 May 4, 2000.

TRD-200003142
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 24, 2000
Proposal publication date: November 26, 1999
For further information, please call: (512) 936-7308

♦ ♦ ♦

TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 89. ADAPTATIONS FOR SPECIAL POPULATIONS

Subchapter D. SPECIAL EDUCATION SERVICES AND SETTINGS

The Texas Education Agency (TEA) adopts the repeal of and new §89.61 and amendment to §89.63, concerning special education services and settings. New §89.61 and the amendment to §89.63 are adopted with changes to the proposed text as published in the November 26, 1999, issue of the *Texas Register* (24 TexReg 10477). The repeal of §89.61 is adopted without changes. The sections establish residential contracting procedures and create definitions for special education instructional arrangements and settings. The TEA is revising its rules to clarify the implementation of residential contracts and reflect changes in accordance with federal regulations and the Individuals with Disabilities Education Act (IDEA) Amendments of 1997.

The adopted repeal of and new §89.61 do not change the content of §89.61; however, the section has been reorganized to better reflect the process governing residential contracts and to provide clarity for its implementation. The adopted amendment to §89.63 provides clarification of legislative and federal intent regarding instructional settings and least restrictive environment. The adopted amendment reflects changes as a result of the passage of Public Law 105-17, the IDEA Amendments of 1997, and the adoption of final federal regulations.

In response to comments, the following changes have been made to the sections since published.

Language in §89.61(a)(1) has been added to clarify that school districts may also consider placing students in "out-of-state" residential facilities.

Language in §89.61(a)(4)(G) was inserted to clarify that if a school district places more than one student in a single facility, it may review the placements of all such students during a single on-site visit to the facility.

Language in §89.61(c)(1) was added to clarify that the provisions of the subsection are triggered only if a district is considering the placement of a student in a residential facility whose education program has not been approved by the commissioner of education. The change clarifies that the commissioner only approves the education program and not the residential facility.

Language in §89.63(c)(2) was amended to clarify when documentation from a licensed physician is necessary to support the need for homebound services and when the placement decision is determined by the admission, review, and dismissal (ARD) committee as part of the continuum of services discussion for infants, toddlers, and young children with disabilities. The format of this subsection was adjusted to accommodate the changes.

Language in §89.63(c)(3) and (c)(10) relating to the proposed definition for residential care and treatment facility instructional arrangement was replaced with the original definition that is currently in rule.

The following comments were received regarding the adoption of the sections.

Comment. The Texas Continuing Advisory Committee for Special Education (CAC) commented that language needed to be inserted into §89.61(a)(1) to clarify that school districts may also consider placing students in "out-of-state" residential facilities.

Agency Response. The agency agrees with the comment and has amended the section.

Comment. The CAC commented that language needed to be inserted into §89.61(a)(4)(G) to clarify that if a school district places more than one student in a single facility, it may review the placements of all such students during a single on-site visit to the facility.

Agency Response. The agency agrees with the comment and has amended the section.

Comment. The CAC requested information from agency staff regarding the agency's enforcement of the requirements of §89.61(b)(1)(D) that a school district attempt lesser restrictive placements prior to placing a student in a residential facility.

Agency Response. The agency provided the requested information. This comment did not result in any changes to the proposed rule language.

Comment. The CAC commented that language needed to be inserted into §89.61(c)(1) to clarify that the provisions of the subsection are triggered only if a district is considering the placement of a student in a residential facility whose education program has not been approved by the commissioner of education. The requested change would clarify that the commissioner only approves the education program, and not the residential facility.

Agency Response. The agency agrees with the comment and has amended the section.

Comment. An education specialist from a regional education service center commented that §89.63(c)(2) relating to the

homebound instructional arrangement should be amended to clarify when documentation from a licensed physician is necessary to support the need for homebound services and when the placement decision is determined by the ARD committee as part of the continuum of services discussion for infants, toddlers, and young children with disabilities.

Agency Response. The agency agrees with the comment and has amended the section and also adjusted the format of the paragraph to accommodate the change.

Comment. Representatives from the John H. Woods Jr. Charter School, the Honors Academy Charter School, the Alvin Independent School District, the East Central Independent School District, the Alamo Area Council of Administrators of Special Education, and the Sweetwater Independent School District commented regarding proposed §89.63(c)(10) related to the residential care and treatment facility instructional arrangement definition. All the representatives stated that the proposed language would have a negative fiscal impact on each of their school districts.

Agency Response. The agency replaced the proposed definition in §89.63(c)(3) and (c)(10) for residential care and treatment facility instructional arrangement with the original definition that is currently in rule.

Comment. The CAC inquired about the extent to which the language in §89.63(c) permitted school districts to develop and implement creative instructional arrangements for the purpose of educating students with disabilities in the least restrictive environment.

Agency Response. Agency staff responded that the provisions of §89.63(f) address the ability of districts to consider and, with the approval of TEA, implement program options other than those described in §89.63(c). This comment did not result in any changes to the proposed rule language.

Comment. Representatives from the ARC of Texas and Advocacy, Inc. commented in support of the proposed changes to §89.63.

19 TAC §89.61

The repeal is adopted under the Texas Education Code, §42.151(g), which directs the SBOE to adopt rules and procedures governing contracts for residential placement of special education students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2000.

TRD-200003188

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Effective date: September 1, 2000

Proposal publication date: November 26, 1999

For further information, please call: (512) 463-9701

♦ ♦ ♦

The new section is adopted under the Texas Education Code, §42.151(g), which directs the SBOE to adopt rules and procedures governing contracts for residential placement of special education students.

§89.61. Contracting for Residential Educational Placements for Students with Disabilities.

(a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).

(1) A school district may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, or Texas Council on Alcohol and Drug Abuse for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.

(2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.

(3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.

(4) The school district has the following responsibilities when making a residential placement.

(A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.342-300.347, state statutes, and commissioner of education rules.

(B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.

(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.

(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.

(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:

(i) the facility meets minimum standards for health and safety;

(ii) residential placement is needed and is documented in the IEP; and

(iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.

(G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; and/or

(F) residential facility provides unfundable/unapprovable services.

(2) The residential placement, if approved by the TEA, shall be funded as follows:

(A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;

(B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Protective and Regulatory Services for the specific level of care in which the student is placed.

(c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.

(1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.

(2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.

(3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2000.

TRD-200003189
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 1, 2000
Proposal publication date: November 26, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

19 TAC §89.63

The amendment is adopted under the Texas Education Code, §42.151(e), which directs the SBOE to prescribe by rule the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under the Texas Education Code, §42.151.

§89.63. Instructional Arrangements and Settings.

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.550-300.554.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.

(7) Off home campus. This instructional arrangement/setting is for providing special education and related services to the following, including students at South Texas Independent School District and Windham Independent School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student whose instruction is provided by school district personnel in a facility (other than a nonpublic day school) not operated by a school district; or

(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition plan and only after the school district's career and technology classes have been considered and determined inappropriate for the student.

(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State school for persons with mental retardation. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state school when the services are provided at the state school location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Texas Interagency Council on Early Childhood Intervention.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the

school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by the TEA.

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 May 5, 2000.

TRD-200003190
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 1, 2000
Proposal publication date: November 26, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

Chapter 371. EXAMINATIONS

22 TAC §371.2

The Texas State Board of Podiatric Medical Examiners adopts the amendment to §371.2, concerning Applicant for License, with changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11863).

The changes are as follows: In §371.2(i)(1) after faculty of...we are adding an educational institution in this state including. Then after pending approval...we are deleting or educational institution in this state. In §371.2(i)(4) after teaching confines of the...we are adding educational institution in this state. Also after approved residency program...we are adding or a program pending approval by the Council of Podiatric Medical Education of the American Podiatric Medical Association. In §371.2(j)(2) the word conditional is being changed to conditions.

The amendment is being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all agencies to review their rules. The amendment will add two new types of temporary license.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry , the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

The adopted amendment implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §§259, 260 and 261.

§371.2. Applicant for License.

(a) Any person who wishes to practice podiatric medicine in this state, who is not otherwise licensed under law, must successfully pass an examination given at the Board's direction pursuant to §371.11 of this title (relating to Scoring and Reporting), and complete the graduate podiatric medical education requirements as set forth herein, §371.3(f) of this title (relating to Qualifications of Applicants). One who successfully completes all the requirements for licensing as set forth in these rules and who has made payment of all applicable fees shall be awarded a valid license to practice podiatric medicine in the State of Texas for the term lawfully stipulated by and under the conditions set forth in these Rules, and the Podiatric Medical Practice Act of Texas, Texas Civil Statutes, Article 4567B, *et seq*.

(b) Any person who wishes to set for examination, shall submit a written application on a form provided by the Board. The applicant shall verify by affidavit the information in the application. The Board may refuse to admit to the examination or grant a license to any applicant who knowingly submits false information to the Board.

(c) Applications for examination must be on the Board's application form printed in ink or typewritten, which shall be furnished by the Board staff upon request.

(d) The completed application and required supporting materials must be received by the Board staff no later than 30 days before the first day of the examination. The materials supporting the application, such as transcripts of candidates, shall be received by the Board before the examination.

(e) The filing of an application and tendering the fee to the Board staff shall not in any way obligate the Board to admit the applicant to examination until applicant has been qualified by the Board as meeting the statutory and regulatory requirements for admission to the examination for licensing.

(f) The full examination fee is $250. Only certified check, Postal Service Money Order or Express Money Order shall be accepted. No examination fee will be refunded. The examination fee must be received by the Board at least 15 days before the date the applicant is scheduled to begin the examination.

(g) Temporary License.

(1) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in an accredited graduate podiatric medical education (gpme) program under §371.3(f) for a term not to exceed the time the graduate is enrolled in said gpme program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds three years.

(2) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in a gpme program that is pending accreditation, as defined under §371.3(f) for a term not to exceed the time the graduate is enrolled in said gpme program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds four years. It shall be

the sole responsibility of the applicant to ascertain the accreditation status, as defined in §371.3(f) of the applicant's gpme program.

(3) A temporary licensee granted a temporary license for the purpose of pursuing a gpme program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the gpme program in which he or she is enrolled.

(4) A temporary license granted by the Board for the purpose of pursuing a gpme program in the State of Texas shall terminate by operation of law and under these rules at the time and on the day that said temporary licensee leaves or is terminated from said gpme program. Any successive entry into a second or further gpme program shall be subject to all laws and rules and application requirements set forth herein.

(5) All temporary licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Podiatric medical Practice Act of Texas, Article 4567 *et seq*., and subsequent amendments, including Article 4574 of said Act, and Chapter 376 of this title (relating to Violations and Penalties), except that temporary licensees are not subject to any Board rules concerning continuing medical education.

(6) Prior to licensure, applicants for a temporary license must have passed both Part I and Part II of the National Board, and shall provide written documentation of passing same directly from the National Board of Podiatric Medical Examiners to the Texas State Board of Podiatric Medical Examiners.

(h) Extended Temporary License.

(1) The Agency's Executive Director may grant the holder of a current "Texas Temporary License" an "Extended Temporary License", for good cause. Good cause may include but is not limited to:

(A) The illness of the holder or a family member for whom the holder is directly or indirectly responsible.

(B) A verifiable family emergency.

(C) An additional residency training issue.

(D) Additional time needed for he result of the Texas Oral Exam to be disseminated and for a valid regular license to be issued by the Board to the holder.

(2) An Extended Temporary License is an extension of the holder's Temporary License and shall allow the holder to continue to practice podiatric medicine for up to an additional three months, with the same responsibilities, restrictions and conditions of a Temporary License as found in §371.2(g) of this section.

(3) The fee for an Extended Temporary License shall be $50 for a three month period.

(4) An Extended Temporary License may be renewed a maximum of two times to any holder of a Temporary License. The second renewal shall be granted only after and upon the agency's Executive Director's determination that appropriate "good cause" circumstances continue to exist for the re-issuance of an Extended Temporary License.

(i) Temporary Faculty License.

(1) The Board may issue a Temporary Faculty License to a qualified podiatric physician who at the time of applying for this license has accepted an appointment to, or is serving as a full-time member of the faculty of an educational institution in this state including a hospital approved podiatric residency program, a residency program pending approval, offering an approved or accredited course of study or training leading to a degree in podiatric medicine.

(2) In this subsection (i), the term "qualified podiatric physician" shall mean one who:

(A) Is a licensed podiatric physician in good standing in another state having similar licensing requirements as that of this Board, and;

(B) Has been in podiatric practice in another state.

(3) This Temporary Faculty License shall be issued to the holder in 31 day increments not to exceed 24 periods. The incremental periods wherein the license is valid need not be contiguous, but rather may be in any arrangement approved by the Executive Director of the Board.

(4) The Temporary Faculty License shall authorize the visiting podiatric physician to practice podiatric medicine only and exclusively within the teaching confines of the educational institution in this state, hospital or approved residency program or a program pending approval by the Council of Podiatric Medical Education of the American Podiatric Medical Association as a part of the duties and responsibilities assigned by the teaching institution to the license holder.

(5) Except for the requirement of passing the Board's Oral Examination and completing an approved one-year residency program any person applying for a Temporary Faculty License under this section must comply with all application, and licensure requirements found in §371.3 and are subject to the Board's Statute and Rules.

(6) The holder must sign an oath on a notarized form provided by the Board swearing that the holder has read and is familiar with the Board's Statute and Rules; will abide by this Statute and Rules and will be subject to the disciplinary procedures of the Board.

(j) Provisional License.

(1) Requirements for Provisional License. On application for examination, an applicant may apply for a provisional license under the following circumstances.

(A) The applicant must be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Podiatric Medical Practice Act, subsequent amendments, and rules and must furnish proof of such licensure on Board forms provided.

(B) The applicant must have passed a national or other examination recognized by the Board relating to the practice of podiatric medicine and must submit a true and correct copy of the applicant's score report.

(C) The applicant must not have failed an examination for a license conducted by the Board.

(D) The applicant's license to practice podiatric medicine must not have been revoked or suspended in any jurisdiction.

(2) Sponsorship. An applicant for provisional licensure must be sponsored by a person currently licensed by the Board for at least five years and in good standing under the Podiatric Medical Practice Act with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the Board determines that compliance with that subsection constitutes a hardship to the applicant.

(4) Application and Fee. The Board shall issue a license pursuant to this rule to the holder of a provisional license if:

(A) The applicant for provisional licensure will be subject to all application requirements required by Chapter 371 of this title (relating to Examinations) and subject to the applicable examination fees established under §371.2(f) of this title (relating to Examination Fee). In addition, the applicant will be subject to a fee for issuance of a provisional license.

(B) No provisional license can be issued until all application forms and fees are received in the Board office and the application is approved.

(C) A provisional license expires upon the passage of 180 days or notice by the Board of the applicant's successful passage or failure of all examinations required by Chapter 371, whichever comes first. It shall be the responsibility of the applicant and sponsor to return the provisional license to the Board office on expiration.

(D) The applicant's failure to sit for the first scheduled Board examination following application for examination invalidates the provisional license, unless in the discretion of the Executive Director sufficient and reasonable evidence regarding nonappearance exists.

(E) Each applicant for provisional license shall receive only one nonrenewable license prior to the issuance of a license.

(F) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Podiatric Medical Practice Act or Board rules, such provisional license will be subject to disciplinary action including revocation.

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 May 5, 2000.

TRD-200003178
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §371.3, concerning Qualification of Applicants, without changes as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11687).

The rule is being repealed due to numerous changes needed. A new rule is being adopted with the changes.

No comments were received regarding the repeal.

The repeal is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

No other code, statute or article are affected by this repeal.

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 May 5, 2000.

TRD-200003179
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

The Texas State Board of Podiatric Medical Examiners adopts new §371.3, concerning Qualification of Applicants, with changes as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11687).

The changes are as follows: In §371.3(e) after National Board...we are adding of Podiatric Medical Examiners to better clarify the name of the entity.

The new rule is being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all agencies to review their rules. After initial review it was determined that there were numerous changes needed to this rule. The original rule is being repealed and replaced by this one. The new rule will clarify the old rule.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

The new rule implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202, §252 and §253.

§371.3. Qualification of Applicants.

(a) All applicants shall have attained the age of 21 years.

(b) If the applicant has ever been convicted of a felony or a crime of moral turpitude under the state laws of any state or the federal laws of the United States, the approval for licensure shall be at the discretion of the Board.

(c) All applicants shall have completed the number of college courses required by the Texas Civil Statutes Article 4570(b)(3), and graduated from an accredited college of Podiatric Medicine in the United States. The applicant's entire course of instruction must be from such an approved college, and the college must have been so approved during the entire course of the applicant's course of instruction.

(d) All applicants shall have successfully completed a course in cardiopulmonary resuscitation within the year previous to the application for licensing and provide a certification to that effect.

(e) All applicant's shall have successfully passed all sections of the National Board and provide their scores directly from the National Board of Podiatric Medical Examiners to the Texas State Board of Podiatric Medical Examiners.

(f) If §371.6(d) of this title (relating to Time, Place and Scope of Examinations) applies, all applicants must meet the overall minimum cut score for the criterion referenced exam. Each applicant shall cause their test scores from such exam to be sent directly from the testing entity to the Board.

(g) Every applicant shall have completed at least one year of gpme with a hospital, clinic or institution acceptable to the Board in a gpme program approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association. Certified documentation of enrollment in said gpme program must accompany the application to the Board for licensing. This subsection, becomes effective at 12:01 a.m., July 1, 1995.

(h) The Board approves and adopts by reference the standards for accreditation of gpme programs adopted by the Council on Graduate Podiatric Medical Education of the American Podiatric Medical Association. The standards are available from the Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216. The Board considers any college of podiatric medicine accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association as a college approved by the Board.

(i) The applicant shall submit evidence sufficient for the Board to determine that the applicant has met all the requirements of this section and any other information reasonably required by the Board. Any application, diploma or certification, or other document required to be submitted to the Board that is not in the English language must be accompanied by a certified translation thereof into English.

(j) At the discretion of the Board, the gpme requirement set forth in subsection (g) of this section (relating to Qualification of Applicant) may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the Board can show an acceptable record from that state and from all other states under which the applicant has ever been licensed.

(1) A showing of an acceptable record under this subsection is defined to include, but is not limited to, a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action, no conviction of a felony or a crime of moral turpitude, no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization or extended-care facility, and no dishonorable discharge from military service.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.

(3) The applicant shall obtain and submit to the Board a letter from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

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 May 5, 2000.

TRD-200003180
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

22 TAC §371.6

The Texas State Board of Podiatric Medical Examines adopts the amendment to §371.6, concerning Time, Place and Scope of Examination, without changes as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11688).

The amendment is being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all agencies to review their rules. The amendment will make the rule more clear.

No comments were received regarding adoption of the amendments.

The amendment is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

The adopted amendment implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §253.

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 May 5, 2000.

TRD-200003181
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

22 TAC §371.16

The Texas State Board of Podiatric Medical Examiners adopts new §371.16, concerning Review of Examination, without changes as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11689).

The new rule is being proposed to have guidelines for candidates who have failed the examination to review their scores.

No comments were received regarding the adoption of the new section.

The new rule is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).).

The adopted new rule implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §255(c).

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 May 5, 2000.

TRD-200003182
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Chapter 373. IDENTIFICATION OF PRACTICE

22 TAC §§373.1, 373.2, 373.5

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §§373.1, 373.2 and 373.5, concerning Identification of Practice. Sections 373.1 and 373.2 are adopted without changes, and §373.5 is adopted with changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11866).

The change being made is in §373.5(12) we are deleting Liability Company. It is redundant.

The amendments are being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all agencies to review their rules. The amendments will make the rules more clear.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United states to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

The adopted amendments implement the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §§001, 152 and 352.

§373.5. Professional Corporations or Professional Associations.

The name of a professional corporation created for the practice of podiatric medicine shall include one of the following suffices:

(1) (Name), A Professional Corporation;

(2) (Name), A Prof. Corp.;

(3) (Name), P.C.;

(4) (Name), Incorporated.

(5) (Name), Inc.;

(6) (Name), Professional Association;

(7) (Name), P.A.;

(8) (Name), P.L.L.P.;

(9) (Name), Professional Limited Liability Partnership;

(10) (Name), P.L.L.C.;

(11) (Name), Professional Limited Liability Company;

(12) (Name), L.L.C.;

(13) (Name), Limited Liability Company;

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 May 5, 2000.

TRD-200003183
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Chapter 375. RULES GOVERNING CONDUCT

22 TAC §375.12

The Texas State Board of Podiatric Medical Examiners adopts the amendment to §375.12, concerning Reporting Medical Professional Liability Claims, without changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11689).

The amendment is being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all

agencies to review their rules. The amendment will make the rule more clear.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part.).

The adopted amendment implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §353.

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 May 5, 2000.

TRD-200003184
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Chapter 376. VIOLATIONS AND PENALTIES

22 TAC §§376.1 - 376.4, 376.7, 376.9 - 376.11

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §§376.1 - 376.4, 376.7, 376.9 - 376.11, concerning Violations and Penalties, without changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11866).

The amendments are being adopted in accordance with the 1997 General Appropriation Act, Article IX, §167, requiring all agencies to review their rules. The amendment will make the rule more clear.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

The proposed amendments implement the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202 §§158, 203, 204, 253, 501 - 504, 506 - 509, 551 - 561 and 602.

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 May 5, 2000.

TRD-200003185
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Chapter 377. PROCEDURE GOVERNING GRIEVANCES, HEARINGS AND APPEALS

22 TAC §377.28

The Texas State Board of Podiatric Medical Examiners adopts the amendment to §377.28, concerning Rules of Evidence, without changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11690) .

The amendment is being adopted in accordance with the 1997 General Appropriations Act, Article IX, §167, requiring all agencies to review their rules. The amendment will make the rule more clear.

No comments were received regarding the adoption of the amendment.

The amendment is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S. Art. 4568, Subsec (j)(part).)

No other code, statute or article are affected by this rule 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 May 5, 2000.

TRD-200003186
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Chapter 379. FEES AND LICENSE RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners adopts the amendment to §379.1, concerning Fees and License Renewal, without changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11870).

The rule is being adopted due to the fact that we must raise the renewal fee to cover costs mandated by the 2000-2001 Appropriations Bill. The bill states that we must raise additional revenue above and beyond what we already raise in order to received that funding.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. (V.A.C.S., Art. 4568, Subsec. (j)(part).)

The adopted amendment implements the Podiatric Medical Practice Act, Texas Occupations Code, Chapter 202, §§153, 256, 261 and 263.

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 May 5, 2000.

TRD-200003187
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: May 25, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 305-7000

♦ ♦ ♦

Part 25. STRUCTURAL PEST CONTROL BOARD

Chapter 593. LICENSES

22 TAC §593.7

The Structural Pest Control Board adopts amendments to §593.7, without changes to the proposed text published in the issue of the *Texas Register* (25 TexReg 2268).

Justification for the rule is the increased opportunities to the structural pest control industry to obtain more and better continuing education courses.

The rule will function in that it states the cost of submitting continuing education courses to the Structural Pest Control Board for approval.

There were no comments submitted on this rule.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Vernon's Civ.Stat.Ann., Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 May 4, 2000.

TRD-200003139
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: May 24, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 451-7200

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Chapter 401. SYSTEM ADMINISTRATION

Subchapter G. COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION CENTERS

25 TAC §§401.441-401.456

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.441 - 401.456 of Chapter 401, Subchapter G, concerning community mental health and mental retardation centers, without changes as proposed in the February 25, 2000, issue of the *Texas Register* (25TexReg1514-1515). New §§411.301 - 411.316 of new Chapter 411, Subchapter G, concerning community MHMR centers, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing the same matters.

No comment on the proposed repeals was received.

These sections are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; §534.001(e), which requires the board to adopt rules specifying the elements that must be included in a community center's plan, and prescribing the procedure for submitting, approving, and modifying a center's plan; §534.006(a), which requires the board to adopt rules establishing an annual training program for members of boards of trustees; §534.021(a), which requires the board to adopt rules describing the approval and notification process relating to the acquisition of real property by a community center; §534.035(a), which requires the adoption of rules establishing review and audit procedures that provide reasonable assurance a community center has adequate and appropriate fiscal controls; and §534.038(d), which requires the board to adopt rules prescribing the process for a community center to appeal the commissioner's decision to appoint a manager or management team to manage and operate the center.

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 May 5, 2000.

TRD-200003168

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: May 25, 2000

Proposal publication date: February 25, 2000

For further information, please call: (512) 206-5216

♦ ♦ ♦

Chapter 411. STATE AUTHORITY RESPONSIBILITIES

Subchapter G. COMMUNITY MHMR CENTERS

25 TAC §§411.301 - 401.316

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§411.301 - 411.316 of new Chapter 411, Subchapter G, concerning community MHMR centers. Sections 411.305 and 411.306 are adopted with changes to the proposed text as published in the February 25, 2000, issue of the *Texas Register* (25TexReg1515-1523). Sections 411.301 - 411.304 and 411.307 - 411.316 are adopted without changes. The repeals of §§401.441 - 401.456 of Chapter 401, Subchapter G, concerning community mental health and mental retardation centers, which the new sections replace, are contemporaneously repealed in this issue of the *Texas Register*.

The new rules are substantially the same as the rules they replace except in the following ways: The new rules establish review and audit procedures that provide reasonable assurance a community center has adequate and appropriate fiscal controls as required by the Texas Health and Safety Code, §534.035 (amended by the 76th Legislature, SB 452). The audit procedures include the current requirement for centers to submit copies of an annual audit of the center's accounts as well as an additional requirement for TDMHMR to conduct on-site audits of a center as it deems necessary. The review procedures include conducting a desk review of centers' annual audits and performing financial risk assessments based on centers' annual audit and/or any additional financial information that a center may be required to submit. Language is added to §411.310 requiring boards of trustees to assure TDMHMR unrestricted access to their centers' records, data, and other information to enable TDMHMR to audit, monitor, and review their centers' financial and programmatic activities and services as required by the rules' audit procedures and the Texas Health and Safety Code, §534.033 and §§534.035-.037. The new rules also replace language relating to appointment of a manager or management team with the statutory reference while continuing to include the process for a community center to appeal the commissioner's decision to appoint a manager or management team to manage and operate the center. Language is added to the "Charter To Be a Community Center" (Exhibit A) requiring centers to include in their plans their intention to create or operate a non-profit corporation as allowed by the Texas Health and Safety Code, Chapter 534, Subchapter C. The new rules also fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Language in §411.305(c)(4) and §411.306(d) has been modified to be consistent with the statutory requirement contained in the Texas Health and Safety Code, §534.016.

Written comment on the proposal was received from the Parent Association for the Retarded of Texas (PART), Austin, and a parent of a state school resident, Garland.

Regarding the definition of "local authority" in §411.303(10), two commenters stated their belief that a local authority had to be non-profit and requested that the definition reflect such. The department responds that the definition is consistent with the definitions of "local mental health authority" and "local mental retardation authority" in §531.002 of the Texas Health and Safety Code, which do not include a requirement for non-profit status.

Regarding the principles of developing local services in §411.304(b)(1)-(3), two commenters recommended adding language that would equate persons receiving services with their legally authorized representatives (LARs) and narrow the influence of other stakeholders. The department responds that the principles described in the rule are general guidelines for developing publicly funded services at the local level and *should be* inclusive of all stakeholders. Additionally, it is unnecessary to add language equating LARs with persons receiving services because an LAR is legally responsible for acting in the person's best interest.

Regarding the provision of a comprehensive array of MHMR services in §411.305(a)(2)(C), two commenters requested that the phrase "including state schools" be added. The department declines to add the requested phrase because community centers are not responsible for providing state school services. The department notes that a local mental retardation authority, which could be a community center, must provide a person with mental retardation (or LAR) seeking residential services with a clear explanation of all of the programs and services for which the person is eligible, including state schools.

Regarding the ability of the commissioner to not accept the recommendation of the administrative law judge if it is not supported by substantial evidence in §411.305(c)(3)(B), §411.306(c)(2), and §411.309(b)(2), two commenters asked what would be the purpose having an administrative hearing if the commissioner could overrule the administrative law judge. The department responds that this is a model for administrative hearings that many regulatory agencies use. The administrative law judge hears and analyzes the evidence from all parties to the case, makes a proposal, and the commissioner has the discretion to make the final decision. This model makes sense to use when the decision is in a very specialized area and the agency wants to provide a forum for due process but keep the final decision-making authority with the head of the agency.

Regarding the phrase "provision of services to former consumers of a department facility" in §411.310(a)(3) and (b)(9)(C), two commenters requested changing the phrase to "provision of services to consumers entering or leaving a department facility" to be consistent with the language in §411.305(c)(4) and §411.306(d). The department responds that the language in §411.305(c)(4) and §411.306(d) has been modified because it did not accurately reflect the statutory requirement contained in the Texas Health and Safety Code, §534.016. The department

declines to modify the language in §411.310(a)(3) and (b)(9)(C) because the requirements are consistent with the Texas Health and Safety Code, §534.016 and §534.033.

Regarding board of trustees training concerning the range of environments in which MHMR services are delivered in §411.310(c)(1)(C), two commenters requested that state schools be specifically mentioned as an environment. The department responds that there are numerous and varied environments in which MHMR services are delivered. To single out one environment could incorrectly imply its importance is greater than the others.

Regarding number 1 of Section II of the Exhibit A figure in §411.314(1), two commenters requested that the phrase "when appropriate and is the consumer's or LAR's choice" be added to the end of the second item. The commenters also requested that a third item be added stating, "providing services to persons entering or leaving state schools." The department responds that adding the commenters' suggested phrase would not make sense because the second item merely states that the purpose of a community center is to ensure the availability of a continuum of services, of which the center is a vital component, that "strives to develop services that are effective alternatives to large facilities." Developing and making available services that are effective alternatives to large facilities provide persons receiving services and their LARs with choices that they believe are appropriate. Regarding adding a third item, the department responds that the provision of services to persons entering or leaving state schools is part of the continuum of services that is addressed in the second item.

Regarding number 2 of Section II of the Exhibit A figure in §411.314(1), two commenters requested that "including state schools" be added after "comprehensive range of services." The department declines to add the requested phrase because community centers are responsible for providing a comprehensive range of services *in the community*. The department has the authority and responsibility for operating state schools.

Regarding the phrase "to assist in carrying out the policies of the state to assure treatment of persons in their own communities, when appropriate and feasible" in number 3 of Section II of the Exhibit A figure in §411.314(1), two commenters agreed with the statement and expressed appreciation that the rule acknowledges "the community" is not the only appropriate and feasible place for persons to receive services. The department appreciates the commenters' agreement.

These sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; §534.001(e), which requires the board to adopt rules specifying the elements that must be included in a community center's plan, and prescribing the procedure for submitting, approving, and modifying a center's plan; §534.006(a), which requires the board to adopt rules establishing an annual training program for members of boards of trustees; §534.021(a), which requires the board to adopt rules describing the approval and notification process relating to the acquisition of real property by a community center; §534.035(a), which requires the adoption of rules establishing review and audit procedures that provide reasonable assurance a community center has adequate and appropriate fiscal controls; and §534.038(d), which requires the board to adopt rules prescribing the process for a community center to appeal the commissioner's decision to appoint a manager or management team to manage and operate the center.

§411.305. Process to Establish a New Community Center.

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to the commissioner outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) The commissioner designates staff who are knowledgeable of community center operations to review the letter of intent using the following criteria:

(A) the rationale clearly supports the benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with the department's mission for the development of community services in Texas;

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) providing services efficiently is financially viable.

(3) The commissioner's response to the local agency's letter of intent is based on the review described in paragraph (2) of this subsection and is sent to the local agency by certified mail, return receipt requested.

(A) If the commissioner approves the letter of intent, the response includes notification of such approval.

(B) If the commissioner does not approve the letter of intent, the response includes the reasons for disapproval.

(b) Appointment of board of trustees. If the local agency receives approval of its letter of intent, then it prescribes the criteria and procedures for the appointment of members of a board of trustees as described in the Texas Health and Safety Code, §534.002 or §534.003, and §534.004, §534.005, and §534.0065. The local agency prescribes and makes available for public review the elements listed in the Texas Health and Safety Code, §534.004(a). If more than one agency is involved, the local agencies shall enter into a contract of interlocal agreement that stipulates the number of board members and the group from which the members are chosen, as provided in the Texas Health and Safety Code, §534.003(c). The local agencies may renegotiate or amend the contract of interlocal agreement as necessary to change the:

(1) method of choosing the board of trustees members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographical diversity of the region's population.

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to the commissioner an initial written plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning

advisory council, each with at least 50% representation of persons who have received or are receiving services or their family members, to assist in developing the initial plan. The board of trustees shall also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the citizens in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes:

(i) a statement of the mission, vision, values, and principles which provide the foundation of the proposed community center's local service delivery system;

(ii) a definition of all populations to be served;

(iii) a description of relevant internal and external assessments and evaluations which may provide direction for the local strategic planning process;

(iv) a statement of local service needs and priorities to be addressed through a combination of resource development, expansion, reduction, and termination with the local service delivery system with the rationales for these selections;

(v) a summary of needs assessment data and processes used in the determination of local service needs and priorities;

(vi) identified gaps in services and supports in the local service delivery system which may assist in the determination of local service needs and priorities;

(vii) a description of existing local mental health and mental retardation resources and planned resource development activities;

(viii) a statement regarding innovative services considered and how these affect the local strategic planning process;

(ix) a statement of management needs and priorities to support an effective and efficient local service delivery system; and

(x) plan objectives, strategies, and outcomes.

(B) a charter in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits).

(C) a prospectus, which describes:

(i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records/information from state-operated community services (SOCS) or other community centers and the time frames for transfer;

(ii) any identified additional available funds;

(iii) the arrangements for uninterrupted delivery of services; and

(iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review. The commissioner designates staff who are knowledgeable of community center operations to review the initial plan. The designated staff may verify the information contained in the initial plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.

(3) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:

(A) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the initial plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;

(B) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and

(C) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.

(4) Approval or disapproval. The commissioner recommends approval or disapproval of the initial plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the initial plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the initial plan by staff. A recommendation of approval requires that the assessment confirms that the initial plan properly fulfills the requirements of paragraph (1) of this subsection to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.

(A) If the Texas MHMR Board approves the initial plan in its entirety, then the department issues a certificate of recognition as a community center.

(B) If the Texas MHMR Board approves portions of the initial plan and such approved portions properly fulfill the requirements of paragraph (1) of this subsection, then it instructs the official record to reflect such portions as the approved initial plan in its entirety and the department issues a certificate of recognition as a community center.

(C) If the Texas MHMR Board does not approve the initial plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, including time frames.

(5) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.

§411.306. Updating a Community Center's Current Plan.

(a) Submission. On an assigned three-year cycle, or as requested by the Texas MHMR Board, or as necessary, the board of trustees of a community center shall submit to the commissioner an update of its current plan, which reflects the center's purposes and functions. The updated plan shall be in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits).

(b) Review. The commissioner designates staff who are knowledgeable of community center operations to review the updated plan. The designated staff may verify the information contained in the updated plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.

(c) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:

(1) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the updated plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;

(2) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and

(3) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.

(d) Approval or disapproval. The commissioner recommends approval or disapproval of the updated plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the updated plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the updated plan by staff. A recommendation of approval requires that the assessment confirm that the updated plan properly fulfills the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits), to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.

(1) If the Texas MHMR Board approves the updated plan in its entirety, then the department issues an updated a certificate of recognition as a community center.

(2) If the Texas MHMR Board approves portions of the updated plan and such approved portions properly fulfill the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits), then it instructs the official record to reflect such portions as the approved updated plan in its entirety and the department issues an updated certificate of recognition as a community center.

(3) If the Texas MHMR Board does not approve the updated plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames and the functions the community center may perform pending approval. If the Texas MHMR Board does not provide requirements for resubmission then the department no longer recognizes the entity as a community center.

(e) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan or as provided for in subsection (d)(3) of this section.

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 May 5, 2000.

TRD-200003167
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: May 25, 2000
Proposal publication date: February 25, 2000
For further information, please call: (512) 206-5216

♦ ♦ ♦

TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 21. TRADE PRACTICES

Subchapter T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2801 - 21.2816

The Commissioner of Insurance adopts new §§21.2801 - 21.2816 concerning submission of clean claims to health maintenance organizations (HMOs) and insurers who issue preferred provider benefit plans. Sections 21.2802-21.2809, §21.2811, and §21.2815 are adopted with changes to the proposal as published in the December 17, 1999, issue of the *Texas Register* (24 TexReg 11219). Section 21.2801, §21.2810, §§21.2812 - 21.2814, and §21.2816 are adopted without changes and will not be republished in the *Texas Register*.

These sections provide definitions and procedures necessary to implement House Bill 610 (Acts 1999, 76th Leg., ch. 1343, p. 4556, eff. Sept. 1, 1999) enacted by the 76th Legislature and existing Articles 3.70-3C, §3(m) and 20A.09(j) of the Insurance Code. During the 1997 legislative session, the legislature enacted Articles 3.70-3C, §3(m) and 20A.09(j) of the Insurance Code (Senate Bill 383 (Acts 1997, 75th Leg., ch. 1024, §1, eff. June 19, 1997) and Senate Bill 385 (Acts 1997, 75th Leg., ch. 1026, §7, eff. Sept. 1, 1997)) to require preferred provider carriers and HMOs to pay claims submitted by contracting physicians or providers within 45 days. The "trigger" for calculating the prompt payment period was the receipt of a claim for payment "with the documentation reasonably necessary to process the claim." In practice, the issue of what documentation was reasonably necessary to process a claim resulted in numerous disputes between HMOs or preferred provider carriers and their contracted physicians or providers submitting claims. House Bill 610, passed during the 1999 legislative session, requires claim payment or denial, in whole or in part, on "clean claims" submitted by contracted physicians and providers to HMOs and preferred provider carriers within the statutory claims payment period of 45 days after the date that the clean claim is received.

Under the new law, if an HMO or preferred provider carrier acknowledges coverage of an enrollee or insured but intends to audit the clean claim, the HMO or preferred provider carrier shall pay 85% of the contracted rate on the claim within the statutory claims payment period. House Bill 610 also requires an electronically adjudicated and electronically paid prescription benefit claim for authorized treatment to be paid within the statutory claims payment period (i.e., 21 days after the treatment is authorized). The new law also provides that department rules shall determine when a claim is complete, thus constituting a "clean claim."

These sections are necessary to implement House Bill 610 and are intended to diminish the frequency of disputes arising between HMOs or preferred provider carriers and their contracted physicians or providers submitting claims by requiring prior notification to the physicians and providers of documentation considered reasonably necessary to process a claim (i.e., what constitutes a "clean claim"). These sections are not intended to address the validity or the viability of a submitted claim; instead, these sections specify the required data elements and attachments for a clean claim, which also constitute the documentation considered reasonably necessary to process a claim pursuant to Articles 3.70-3C, §3(m) and 20A.09(j) of the Insurance Code. These sections also specify procedures necessary for the processing of a clean claim, including procedures for requiring necessary attachments, additional clean claim elements, and revision of data elements; auditing; and determination of compliance with the statutory claims payment period. These sections are intended to provide uniformity and consistency in the documentation of and procedures for processing claims, thereby promoting efficiency of claims processing and ensuring prompt claims payment to contracted physicians and providers. Any question as to the completeness of a claim should readily be answered by reference to the physician or provider contract, manual and/or other document that sets forth the procedures for filing claims, and pertinent notifications.

The department recognizes the need for preliminary actions to be undertaken by the HMOs and preferred provider carriers to implement the notification and processing requirements of these sections. Therefore, while all of the adopted sections (§§21.2801-21.2816) become effective 20 days after the date the sections are filed with the office of the Secretary of State, all of the sections (§§21.2801-21.2816) apply to claims filed for non-confinement services, treatments, or supplies rendered on or after August 1, 2000, and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that begin on or after August 1, 2000.

The Commissioner held a public hearing on the proposed sections on January 25, 2000, under Docket No. 2429, at the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Changes have been made to the proposed sections as published; however, none of the changes introduce new subject matter or affect additional persons than those subject to the proposal as originally published. In response to comments, the following changes have been made to the proposed sections: (i) The wording in the definition of "audit" in §21.2802(1) is changed to clarify that "audit" is an instance in which an HMO acknowledges coverage of an enrollee under the health care plan, or a preferred provider carrier acknowledges coverage of an insured under the health insurance policy, but exceeds the statutory claims payment period while processing a clean claim or a portion of a clean claim. This change is made for consistency with Articles 20A.18B(e) and 3.70-3C, §3A(e) as enacted by House Bill 610. The revised wording, however, does not change the meaning or application of the definition as proposed. The revised definition does not refer to acknowledgment of coverage of the service, treatment, or supplies provided to the insured/enrollee, but instead, consistent with the statute, refers to acknowledgment of coverage of an enrollee or insured. (ii) The definition of "billed charges" in §21.2802(2) is revised to amplify on what constitutes "usual" charges as provided in the proposed definition; this is necessary for clarification only and is consistent with the intent of the definition as proposed. The definition is also revised to add a sentence that provides that in the event of a case rate agreed to between the physician or provider and the HMO or preferred provider carrier, the billed charges shall be considered the higher of the case rate or billed charges. This change is necessary to prevent HMOs and preferred provider carriers from unduly benefiting rather than paying a penalty for failure to comply with the requirements of §21.2807(b) and §21.2809(a) and (c) in those situations in which there is a "case rate" payment that is a higher dollar amount than the full billed charges. As a result of this revision to the definition of "billed charges", the definition of "case rate" is added as paragraph (3) of §21.2802, and subsequent definitions in §21.2802 are re-designated accordingly. All references in all the sections to these subsequent definitions are also changed accordingly. (iii) The definition of "clean claim" in proposed §21.2802(3) is re-designated as §21.2802(4), and the wording of the definition is changed to include reference to an enrollee under a health care plan and to an insured under a health insurance policy. This change is made for consistency with the wording of Articles 3.70-3C, §3A(a) and 20A.18B(a) as enacted by House Bill 610. The revised wording, however, does not change the meaning or application of the definition as proposed. (iv) The definition of "procedure code" in proposed §21.2802(20) is re-designated as §21.2802(21) and is changed to expand the definition to include local codes developed by Medicaid and Medicare. This change is necessary because there are codes in both of these programs that address services not described by a CPT or HCPC code. (v) Section 21.2802(24)(C) is re-designated as §21.2802(25)(C) (definition of "statutory claims payment period" for prescription benefit claims that are electronically adjudicated and electronically paid) and is changed to clarify that the clean claims for prescription benefits that are electronically adjudicated and electronically paid must also be "electronically submitted" clean claims. This same clarification change is made to §21.2807(c)(1) and (2) (relating to effect of filing a clean claim for a prescription benefit that is electronically adjudicated and electronically paid). These changes are needed to clarify that the new sections only apply to completely paperless claims in which payment is made by electronic funds transfer. (vi) Section 21.2803(b)(1) is revised to add another data element (designated as (P)) for the first date of previous same or similar illness (HCFA 1500, field 15). The information provided in this data element will assist preferred provider carriers in more promptly determining whether there are pre-existing conditions for which there may not be coverage under the health insurance policy for the service, treatment, or supplies submitted as a clean claim and thereby, in some instances, reducing the amount of time required for processing the clean claim or a portion of the clean claim pursuant to Article 3.70-3C, §3A(c) and (e) of the Insurance Code as enacted by House Bill 610 and §§21.2807 and 21.2809. The information provided in this data element will assist HMOs and preferred provider carriers in detecting possible

fraud or material misrepresentations on the application for coverage. (vii) Four changes are made to §21.2803 for purposes of addressing coordination of benefit or non-duplication of benefit situations. Section 21.2803(b)(1)(L) relating to disclosure of any other health benefit plans (HCFA 1500, field 11d) is revised to add clauses (i)(I) and (ii) to specify what actions a physician or provider must take if the response is "yes" to the disclosure of other health benefit plans or if the response is "no." These revisions to §21.2803(b)(1)(L) necessitate that paragraphs (3)(A)-(E) of §21.2803(b) be revised in accordance with the revisions to §21.2803(b)(1)(L)(i)(I). Clause (i)(II) is also added to paragraph (L) and the change to §21.2803(e) specifies what information is necessary when physicians or providers are submitting claims to secondary payor HMOs and preferred provider carriers in coordination of benefit or non-duplication or benefit situations. As a result of the revisions to §21.2803(b)(1)(L) and §21.2803(e), §21.2803(b)(3)(I) and (b)(3)(T) are changed to require that these two data elements must be completed in accordance with §21.2803(b)(1)(L) or as required by §21.2803(e). These revisions are necessary to assist HMOs and preferred provider carriers in determining more promptly the proper action on a clean claim in coordination of benefit or non-duplication of benefit situations and to ensure that physicians and providers submit claims in such situations in an expeditious manner. (viii) Sections 21.2804, 21.2805, and 21.2806 are revised to clarify that if the contract between the physician or provider and the HMO or preferred provider carrier provides for mutual agreement of the parties as the sole mechanism for requiring attachments; additional clean claim elements; or revised data elements, attachments or additional clean claim elements that have previously been properly included as clean claim elements, the optional provisions for notice specified in those sections do not supersede the requirement for mutual agreement. This change is consistent with the intent of §§21.2804, 21.2805, and 21.2806 as proposed. (ix) A reference to §21.2811 (Disclosure of Processing Procedures) is added to §21.2807(a) to clarify that the address of the HMO, preferred provider carrier, or a delegated claims processor designated by the HMO or preferred provider carrier as the place for submission of claims must be provided to the physician or provider in accordance with the procedures specified in §21.2811. (x) Sections 21.2807(b) and §21.2809(a) are revised to delete the reference to §21.2802(24)(A), i.e., the 45-calendar day, or other time period not to exceed 45 calendar days set forth by written agreement between the physician or provider and the HMO or preferred provider carrier, in which claim payment or denial, in whole or in part, shall be made by an HMO or preferred provider carrier after receipt of a clean claim pursuant to the Insurance Code Article 3.70-3C, §3(m) (Preferred Provider Benefit Plans) and Article 20A.09(j) (HMOs). This deletion is necessary because the statutory penalties provided in Article 3.70-3C, §3A and Article 20A.18B as enacted by House Bill 610 do not apply if clean claims are not processed within a contracted period of less than 45 days. This also necessitated an addition to §21.2815, which addresses the statutory penalties for failure to meet the statutory claims payment period, to provide that the statutory penalties do not apply if clean claims are processed within a contracted period of less than 45 days. (xi) Section 21.2808 is changed to provide for a 45-calendar-day period for notice of deficient claim, other than prescription benefit claims. This change is made in response to commenters who objected to the proposed 15-business days for notification of a deficient claim because the 15-business-day requirement conflicts with the statutory provision that an HMO or preferred provider carrier has 45 days to process a claim, and the 15-day requirement would essentially require the HMO or preferred provider carrier to process the claim twice. The provision in proposed §21.2808 that the HMO or preferred provider carrier and the physician or provider may agree to a different time period for notification that a claim is deficient is changed to specify that the agreed time period may not exceed 45 calendar days. This change is necessary for consistency with the provisions and intent of House Bill 610. A provision has also been added to §21.2808 for notification of providers who file electronically submitted prescription benefit claims that are determined to be deficient. The notice must be provided within 21 calendar days. This addition is necessary because House Bill 610 specifies different time periods for processing clean claims for prescription benefits and clean claims for medical care or health care services under a health insurance policy or health care plan, and the section as proposed did not address notification of providers who file electronically submitted prescription benefit claims that are determined to be deficient. (xii) Section 21.2809(b) is changed to clarify that refunds due to HMOs or preferred provider carriers upon completion of an audit may be made by any method, including chargebacks against the physician or provider, or agreements by contract. This change is necessary to recognize the various payment systems of the different types of physicians and providers and to allow flexibility to both the physicians and providers and HMOs or preferred provider carriers to develop the most effective and efficient method of handling refunds due to the preferred provider carrier or HMO. (xiii) Section 21.2811(a) is changed to require that the physical address of the claims processing entity be provided to the physician or provider. This change is necessary for delivery of certified mail or courier-delivered mail. (xiv) All references in all the adopted to specific number of days are changed to clarify that the references are to "calendar" days. This change does not change the actual number of days of any of the time periods specified in the sections. (xv) The proposed compliance date of June 1, 2000, is changed to provide HMOs and preferred provider carriers sufficient time to implement the notification and processing requirements of the new sections. While all of the adopted sections (§§21.2801-21.2816) become effective 20 days after the date the sections are filed with the office of the Secretary of State, all of the sections (§§21.2801-21.2816) apply to claims filed for non-confinement services, treatments, or supplies rendered on or after August 1, 2000, and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that begin on or after August 1, 2000.

In addition to the changes resulting from comments on the proposed sections, the following clarifying and editorial changes have also been made to the sections as adopted: (i) Subsections (b) and (c) of §21.2809 (relating to Audit Procedures) are revised to clarify that upon completion of the audit, any refund due to the HMO or preferred provider carrier or additional payment due to the physician or provider is only due if the HMO or preferred provider carrier determines that such refund or additional payment is due. (ii) Section 21.2815 (Failure to Meet the Statutory Claims Payment Period) is revised to clarify that the statutory penalties apply only for failure to comply with the requirements of §21.2807(b) relating to the statutory claims payment period and the actions to be taken upon receipt of a clean claim other than a clean claim for a prescription benefit. This change is necessary because Article 3.70-3C, §3A(f) and Article 20A.18B(f) as enacted by House Bill 610 do not apply the statutory penalties to preferred provider carriers or HMOs that

violate Article 3.70-3C, §3A(d) and Article 20A.18B(d) relating to prescription benefit claims. (iii) Non-substantive, editorial changes include the change in spelling from "payer" to "payor" in §21.2803(b)(3) to conform the spelling with the more common spelling used in insurance terminology and the addition of the word "or" in §21.2807(c)(1) to clarify that either paragraph (1) or (2) applies depending on whether the clean claim is an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to Insurance Code Article 3.70-3C, §3A(d) (Preferred Provider Benefit Plans) and Article 20A.18B(d) (HMOs) or an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to §21.2814.

Section 21.2801 sets forth the scope and purpose of the new sections, including the applicability of the new sections to all paper and electronic claims submitted by contracted physicians or providers of HMOs and preferred provider carriers. Nothing in the new sections is to be construed as obviating the duty of HMOs or preferred provider carriers to promptly and efficiently process claims submitted by covered individuals and non-contracted physicians or providers. Section 21.2802 defines terms used in the rules, including the term "clean claim" which has not previously been defined. Where possible, existing definitions of terms were incorporated by reference to their statutory or regulatory origin. The term "audit" is defined for purposes of implementing the newly enacted requirements in House Bill 610 (Articles 20A.18B(e) and 3.70-3C, §3A(e)) that when the HMO or insurer intends to audit the clean claim, 85% of the contracted rate on the claim be paid within 45 days after the date the clean claim is received from the physician or provider.

Section 21.2803 specifies the elements of a clean claim. A clean claim consists of specified data elements utilized on Health Care Financing Administration (HCFA) claim forms; attachments specified by contract, manual, other document, or proper notice; additional elements that are identified by contract, manual, other document, or proper notice; and in coordination of benefit or non-duplication of benefit situations, the amount paid as a covered claim by the primary plan or other coverage. Section 21.2803 also addresses formatting requirements for the required elements and the effect of the submission of additional data elements, attachments, or information in a clean claim. Section 21.2804 provides procedures for disclosure of necessary attachments and allows HMOs and preferred provider carriers to give such disclosure by written notice, by updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures, or by contract. Section 21.2805 provides procedures for disclosure of clean claims elements and attachments that are required by the HMO and preferred provider carrier in addition to those elements and attachments required pursuant to department rules and allows HMOs and preferred provider carriers to give such disclosure by written notice, by updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures, or by contract. Section 21.2806 provides that, if an HMO or preferred provider carrier changes its requirements for data elements, attachments, or additional clean claim elements that have previously been included as elements of a clean claim pursuant to department rules, the HMO or preferred provider carrier must give to the affected physicians and providers at least 60 calendar days prior written notice of the revisions. Under paragraph (3) of §§21.2804 and 21.2805, and under §21.2806, if the contract provides for mutual agreement of the parties as the sole mechanism for requiring attachments; additional clean claim elements; or revised data elements, attachments or additional clean claim elements that have previously been properly included as elements of a clean claim, then the other specified methods of notice (i.e., written notice or updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures) do not supersede the requirement for mutual agreement.

Section 21.2807 addresses in subsections (a) and (b) the effect of filing a clean claim for medical care or health care services under a health care plan or health insurance policy, including when the statutory claims payment period starts to run and the actions required, pursuant to House Bill 610, of the HMO or preferred provider carrier upon receipt of a clean claim and prior to the expiration of the statutory claims payment period. These actions include (i) payment of the total amount of the clean claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) denial of the entire clean claim and written notification to the physician or provider of why the claim is denied (i.e., not a covered claim); (iii) written notification to the physician or provider that the entire clean claim will be audited and payment of 85% of the contracted rate (i.e., determination of coverage of claim not yet determined); or (iv) payment of a portion of the clean claim for which the HMO or preferred provider carrier has determined is a covered claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier and either denial of the remainder of the claim (i.e., not a covered claim) and written notification to the physician or provider of why the remainder of the claim is denied or written notification to the physician or provider that the remainder of the claim will be audited and payment of 85% of the contracted rate on the unpaid portion (i.e., coverage of remainder of claim not yet determined). Section 21.2807(c) specifies the actions to be taken by the HMO or preferred provider carrier after receipt of an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to Article 3.70-3C, §3A(d) and Article 20A.18B(d) of the Insurance Code and §21.2814. Section 21.2808 requires an HMO or preferred provider carrier, upon determination that a claim is deficient (i.e., the claim does not contain the required clean claim elements pursuant to department rules), to notify the physician or provider of the deficient claim within 45 calendar days of the HMO's or preferred provider carrier's receipt of the claim, unless a different period of time, not to exceed 45 calendar days, is agreed to by contract. Under §21.2808, if an electronically submitted claim for a prescription benefit is determined by an HMO or preferred provider carrier to be deficient, the HMO or preferred provider carrier shall notify the provider within 21 calendar days of the HMO's or preferred provider carrier's receipt of the claim. Section 21.2809 specifies audit procedures if an HMO or preferred provider carrier is unable to pay or deny a clean claim in whole or in part within the statutory claims payment period, including procedures for refunds due to the HMO or preferred provider carrier or additional payment to the physician or provider upon completion of the audit. Section 21.2810 outlines the method for determining compliance with the statutory claims payment period.

Section 21.2811 specifies the administrative claim filing information that must be disclosed by HMOs and preferred provider carriers in their physician or provider contracts or in the physician

or provider manual or other document that sets forth the procedure for filing claims with the HMO or preferred provider carrier, or by any other method mutually agreed upon by the contracting parties. If the administrative claims filing information is revised, the HMO or preferred provider carrier must give its contracted physicians or providers at least 60 calendar days written notice prior to the change. Section 21.2812 prohibits the denial of a clean claim because of a change of claims payment address or a change in the delegated claims processor unless the 60 calendar day prior written notice has been provided. Section 21.2813 requires that an HMO or preferred provider carrier that delegates its claims processing functions include in its delegation agreement a provision requiring the delegated claims processor to comply with the clean claims requirements and procedures specified in department rules and applicable law. Claims that are delegated for processing are subject to the statutory claims payment period. Section 21.2814 specifies when the statutory claims payment period begins to run for electronically adjudicated and electronically paid prescription benefits that do not require authorization by an HMO or preferred provider carrier. Section 21.2815 addresses the actions required of an HMO or preferred provider carrier that fails to comply with the statutory claims payment provisions in §21.2807(b) and the audit procedures in §21.2809(a) and (c). Section 21.2816 contains a severability provision.

For: Office of Public Insurance Counsel, North American Medical Management, and National Association of Social Workers\Texas Chapter. For, with changes: Texas Podiatry Association, Texas Medical Group Management Association, Capital Anesthesiology Association, United Regional Health Care System, Tenet HealthSystems, Harris County Medical Society, Texas Medical Association, Texas Hospital Association, Universal Health Services, Core Specialty Associates of North Texas, Texas Association of Health Plans, Good Shepherd Managed Care, United Health Care, Texas Association of Preferred Provider Organizations, Baylor Health Care System, and Humana on behalf of Humana Health Plan of Texas, Inc.; Humana HMO Texas, Inc.; PCA Health Plans of Texas, Inc.; PCA Provider Organization, Inc.; Humana Insurance Company; and Employers Health Insurance Company.

Against: Texas Association of Insurance Officials, Texas Association of Life & Health Insurers, Unicare, American National Insurance Company, Texas Professional Benefit Administrators Association, Brazos Valley Physicians Association, Methodist Hospitals of Dallas, Golden Rule Insurance Company, BlueCross BlueShield of Texas, AMERICAID Texas, Inc., and UT Southwestern Health Systems.

General

Comment: One commenter recommended that all references to specific numbers of days in which affected entities must perform certain functions be defined as either "calendar" days or "business" days.

Response: The department agrees, and the rules are revised to clarify that the references in the rules to specific number of days are "calendar" days.

Comment: Two commenters recommended that the proposed effective date of June 1, 2000 be changed to September 1, 2000. It is believed this is necessary because of the need for drafting revisions to provider manuals, circulating the revisions for comment internally to ensure accuracy, producing copies, and preparing for mailing by certified mail. The commenters stated that many preferred provider carriers have large provider networks and the mailing is an immense undertaking; e.g., one preferred provider carrier has 18,000 physicians and over 200 hospitals in its Texas network. Other problems relate to Y2K. Several health plans are under a systems development freeze until March 15, and they wish to ensure that Feb. 29 (leap day) does not result in problems before lifting the Y2K freeze. Also, health plans maintain several distinct claims systems and each of them will require modification to comply with the rules.

Response: The department disagrees with the recommended effective date, but recognizes the need for preliminary actions to be undertaken by the HMOs and preferred provider carriers to implement the notification and processing requirements of these sections. Therefore, while all of the adopted sections (§§21.2801-21.2816) become effective 20 days after the date the sections are filed with the office of the Secretary of State, all of the sections (§§21.2801-21.2816) apply to claims filed for non-confinement services, treatments, or supplies rendered on or after August 1, 2000, and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that begin on or after August 1, 2000.

§21.2801. Scope and Applicability

Comment: A commenter stated that the proposed rules do not address electronic filing of nonprescription claims, and rules are needed for such claims as a large number of claims are filed electronically.

Response: The rule addresses electronic filing of all claims in §21.2801. That section provides that the rules in the subchapter (28 TAC §§21.2801-21.2816) apply to all paper and electronic claims submitted by contracted physicians or providers.

§21.2802. Definitions

§21.2802(1) Audit

Comment: Five commenters disagreed with the definition of "audit." One commenter stated that the statute does not authorize the definition of "audit" that is included in the proposed rules. However, if a definition is utilized, the commenter suggested: "An instance in which an HMO or preferred provider carrier acknowledges coverage on an enrollee under the health plan but requires longer than the statutory claims payment period to process a clean claim or a portion of a clean claim." Two commenters stated that "audit" is not defined to include where the insurer acknowledges coverage under the health insurance policy.

Response: It is the department's position that a definition of "audit" is needed to implement the statute and that the definition as adopted is the proper definition to implement the statute. Articles 20A.18B(o) and 3.70-3C, §3A(n) of the Insurance Code authorize the Commissioner to adopt rules necessary to implement the articles. It is the department's interpretation that Articles 20A.18B(c) and (e) and 3.70-3C, §3A(c) and (e), when read in the context of the overall statute, provide five possible actions that may be taken by an HMO or preferred provider carrier when a clean claim is submitted for services, treatment, or supplies provided to an insured/enrollee of the HMO or preferred provider carrier. The five possible actions are: Within 45 days of the date the clean claim is received, (i) pay the total amount of the claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) deny the claim in its entirety (i.e., not a covered claim); (iii) pay the portion of the

claim that is not in dispute (i.e., a covered claim) and deny the remainder of the claim (i.e., not a covered claim); (iv) pay the portion of the claim that is not in dispute (i.e., a covered claim) and audit the remainder of the claim and, if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate on the portion of the claim that is being audited (i.e., coverage of the claim not yet determined); or (v) audit the entire claim and, if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate (i.e., coverage of the claim not yet determined). Therefore, whenever the HMO or preferred provider carrier requires more than the 45 days to process a clean claim or a portion of the clean claim for whatever reason, the statute requires the HMO or preferred provider carrier to pay 85% of the contracted rate on the claim. Without a definition for "audit" in the rules, HMOs, preferred provider carriers, physicians and providers could apply varying definitions which would result in inconsistent and ineffective implementation of the statute. The department, however, agrees with the commenter's requested revision, except that in lieu of "on an enrollee," the revised wording should be "of an enrollee" for consistency with the statute. Also, for consistency with the statute, the definition should include a reference to acknowledgment "of coverage of an insured under the health insurance policy." Therefore, the definition of "audit" is revised to read: "An instance in which an HMO acknowledges coverage of an enrollee under the health care plan or a preferred provider carrier acknowledges coverage of an insured under the health insurance policy but exceeds (takes longer than) the statutory claims payment period while processing (to process) a clean claim or a portion of a clean claim." The revision does not change the meaning or application of the definition. The revision does not mean acknowledgment of coverage of the claim for the service, treatment, or supplies provided to the insured/enrollee, but instead, like the statute, refers to acknowledgment of coverage of an individual enrollee or insured. The department's interpretation of "audit" is also supported by the fact that as a practical matter, most physicians and providers obtain a copy of the health care plan card or health insurance card, which provides information on the coverage of the enrollee by the HMO or of the insured by the preferred provider carrier; or contact the HMO or preferred provider carrier via phone, fax, e-mail or other contact to determine if the individual is covered before providing the service, treatment, or supplies.

Comment: One commenter suggested using a more commonly accepted definition of "audit" which contrasts it to the ordinary claims processing procedure. One commenter stated that "audit" means "auditing the elements described on the clean claim"; it does not mean disputing whether or not it's a covered benefit. Another commenter stated that to an insurer, an audit is not a process to determine claims liability but rather a process to ensure accurate billing by the provider once claims liability has been established. One commenter stated that the audit provision in House Bill 610 seems to mean "in office" types of reviews, not requests for medical records.

Response: The department disagrees. Based on a reasonable reading of House Bill 610 in its entirety and a review of the legislative history, the definition of "audit" cannot be defined as suggested by the commenters; otherwise those clean claims that require additional information or investigation by the HMO or preferred provider carrier beyond a checking of the elements described on the claim or attachments to the claim or a checking for "accurate billing" once claims liability has been established are either not included under the statute, or alternatively, the determination of claim liability would have to be one of the elements of a "clean claim." There is no other way to account for such claims under the statute. Neither one of these other possible interpretations is supported by the plain language of the statute or the legislative history. Both the language and the legislative history of House Bill 610 indicate the intent to change the law with regard to the current method of processing claims. There is nothing in House Bill 610 or the legislative history to indicate the omission from the new prompt payment laws of those clean claims for which there is a dispute about whether or not there is coverage for the service, treatment, or supplies submitted as a clean claim. To make the determination of liability for the claim an element of the "clean claim" would simply be a continuation of the status quo and not consistent with the intent of the legislature to change the law with regard to the current method of processing physician or provider claims.

§21.2802(2) Billed charges

Comment: Seven commenters recommended changes to the definition of "billed charges." All of the commenters disagreed with the use of the word "usual" in the definition because it could be interpreted as "usual and customary." One commenter recommended changing the definition to, "The charge the physician or provider normally charges for the services, treatments or supplies submitted to the HMO or preferred provider carrier." Three commenters recommended changing the definition to, "The established charges made by a physician or provider who renders or furnishes services, treatments, or supplies." Two commenters recommended the definition be changed to, "The amount(s) submitted by a physician or provider in field 28 of the HCFA 1500 claim form and in field 47 of the UB-92 who renders or furnishes services, treatments, or supplies."

Response: The department disagrees with the suggested definitions because they either do not provide any greater clarification than the published definition or they are not the definition that is necessary for the proper implementation of House Bill 610. It is necessary that "billed charges" be defined to prevent physicians or providers from billing in excess of their usual charge in order to maximize the penalty under §21.2815 and Articles 20A.18B(f) and 3.70-3C, §3A(f) of the Insurance Code. The department intends for the definition to mean "usual and customary" charges to prevent physicians and providers from billing in excess of their usual charge and has revised the definition to read, "The (usual) charges made by a physician or provider who renders or furnishes services, treatments, or supplies provided the charge is not in excess of the general level of charges made by other physicians or providers who render or furnish the same or similar services, treatments, or supplies to persons in the same geographical area and whose illness or injury is comparable in nature or severity." Other changes are made to the definition of "billed charges" as indicated in the summary of comments and responses for §21.2815.

Comment: One commenter recommended adding the term "total billed charges" to §21.2802 and defining it as: "The amount submitted by the physician or provider to the health maintenance organization (HMO) or preferred provider carrier as indicated on the HCFA 1500, field 28 or on the UB-92, field 47 (identified with revenue code 001) as per HCFA guidelines."

Response: The department disagrees. The term "total billed charges" is not used in the rule; however, "total charge" is a required element under adopted §21.2803 (b)(1)(Z) and (2)(T).

§21.2802(4) Clean claim

Comment: Seven commenters objected to the definition of "clean claim" in proposed §21.2802(3). Two commenters pointed out that the provisions in Article 3.70-3C, §3A(a), (b), and (e) of the Insurance Code all reference "under a health insurance policy." However, throughout the rule, there is no definition of a clean claim that encompasses provisions under a health insurance policy as required by the statute. The inclusion of the term "health insurance policy" within the rule is critical since the health insurance policy is the legal contract between the carrier and the insured that specifies the conditions for a claim to be paid.

Response: Though the term "health insurance policy" is not explicitly referenced in the rule as proposed, the term is included in the rule through the language contained in §21.2801 as well as definitions contained in §21.2802 and the Insurance Code. Section 21.2801 states that the subchapter applies to claims submitted by contracted physicians or providers for services or benefits provided to insureds of preferred provider carriers; §21.2802(19) defines "preferred provider carrier" as an insurer that issues a preferred provider benefit plan as provided in the Insurance Code Article 3.70-3C, §2. That law states that the article applies to any preferred provider benefit plan in which an insurer provides, through its health insurance policy . . . ." (emphasis added). The omission of an explicit reference to "health insurance policy" does not change the fact that the health insurance policy is the legal contract between the preferred provider carrier and the insured that specifies the conditions (i.e., contract terms) for a claim to be paid nor does it have any effect on the proper implementation of House Bill 610 as enacted by the legislature. House Bill 610 does not affect the conditions under which a claim is to be paid but rather provides a means for the specification of elements and attachments which must be submitted by a physician or provider to an HMO or preferred provider carrier for a claim to be "clean" (i.e., department rules); specifies the actions that an HMO or preferred provider carrier must take after receiving a clean claim; and provides the penalties for HMOs and preferred provider carriers that violate the required statutory actions for processing "clean claims." These rules which implement House Bill 610 also do not affect the conditions (i.e., contract terms) under which a claim is to be paid. Article 3.70-3C, §3A(e) and Article 20A.18B(e) as enacted by House Bill 610 specify the interim payment of 85% of the contracted rate on a submitted claim which contains the elements of a "clean claim" under department rules but which the HMO or preferred provider carrier intends to audit. This interim payment does not affect in any way the health care plan or the health insurance policy or the provisions in the plan or policy that specify what is or is not a covered benefit or service, treatment, or supplies. Upon completion of the audit, under the statute and under the rules, the actual amount of the payment on the clean claim is determined based on the terms and conditions of the health care plan or health insurance policy, and any additional payment due a physician or provider or any refund due the HMO or preferred provider carrier is to be made not later than the 30th day after the later of the date that the physician or provider receives notice of audit results or, if an appeal was filed before expiration of the 30-calendar-day refund period, any appeal rights of the insured or enrollee are exhausted. Thus, even though the department does not believe a change is needed in the definition of "clean claim," the department has revised the definition in §21.2802(4) to include reference to a health care plan or a health insurance policy as follows: "A (physician's or provider's) claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy (for payment) with documentation reasonably necessary for the HMO or preferred provider carrier to process the claim, which contains: . . . ." The revision, however, does not change the meaning or application of the definition as proposed.

Comment: Three commenters recommended that the period provided for in Article 3.70-3C, §3A(c) commences to run only after liability has become reasonably clear, as provided in Article 21.21-2, §2(b)(4) concerning unfair claim settlement practices. Therefore, the definition of "clean claim" should be changed to: "A physician's or provider's claim for payment with documentation reasonably necessary for the HMO or preferred provider carrier to process the claim for which coverage and liability under the health insurance policy have become reasonably clear, which contains . . . ." A commenter stated that any claim where liability is not clear should be excluded from the definition of a "clean claim." Another commenter stated that the definition of "clean claim" should be revised to allow the insurer or TPA to investigate each claim for its unique facts, if any, to determine the liability under the basic policy and should include the statutory words "acknowledge coverage of an insured under a health insurance policy." Two commenters recommended that the definition of "clean claim" be revised to include a subparagraph (F) to read: "A clean claim does not include a claim subject to medical review. Medical review is the review of medical records by clinical personnel to determine applicability of a benefit provision, exclusion, or waiver." Without this change, carriers would be forced to pay claims referred for medical review when many of these are determined to be subject to benefit exclusions and then request a refund once the medical review is completed. Chargeback or recoupment may not be an option in the case of a high dollar claim paid to an infrequently used provider. One commenter stated that the definition of "clean claim" needs to exempt claims for which the carrier needs additional information that could not be identified as needed prior to receipt of the claim in order to make a coverage determination. This change is needed because a preferred provider can submit a "clean claim" as defined that includes all of the required elements but the carrier may still need additional information that could not be identified until the claim was received.

Response: The department disagrees. While the policy or health care plan is a legal contract between a preferred provider carrier or HMO and the insured/enrollee that specifies the conditions for a claim to be paid, this fact does not require that the period provided for in Article 3.70-3C, §3A(c) or Article 20A.18B(c) of the Insurance Code commence to run only after liability has become reasonably clear as provided in Article 21.21-2, §2(b)(4). Article 21.21-2, §2(b)(4) provides that "Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear" constitutes an unfair claim settlement practice that is prohibited by Article 21.21-2. Article 3.70-3C, §3A and Article 20A.18B, enacted by the 76th Legislature to be effective September 1, 1999, are the latest enactment of prompt payment laws for claims submitted by contracted physicians or providers for services or benefits provided to insureds of preferred provider carriers and enrollees of HMOs. To add the language "for which coverage and liability under the health insurance policy have become reasonably clear" to the definition

of "clean claim" as suggested by three of the commenters would, in effect, superimpose the requirements of Article 21.21-2, §2(b)(4) over the requirements of Articles 3.70-3C, §3A and 20A.18B, would be inconsistent with the plain language of Articles 3.70-3C, §3A and 20A.18B, and would undermine the legislative intent of these statutes. In drafting the proposed rules, the department performed extensive statutory research. Both the language and the legislative history of House Bill 610 indicate the intent to alter the current method in which claims are processed and pended before being paid or denied. To adopt the changes suggested by the commenters would be to maintain the status quo and thus would not be consistent with the statutory intent. The contract between the preferred provider carrier or HMO and the physician or provider is also a legal document, and the 75th Legislature required in Articles 3.70-3C, §3(m) and 20A.09(j) of the Insurance Code that a preferred provider carrier or HMO pay physicians or providers not later than the 45th day after the date on which a claim for payment is received with documentation "reasonably necessary to process the claim." These rules specify and clarify content standards and notifications from the preferred provider carrier or HMO to the physician or the provider to make clear what documentation is "reasonably necessary" to process a claim. The addition of the language "acknowledge coverage of an insured under a health insurance policy" and "acknowledge coverage of an enrollee under the health care plan" does not mean that a determination of liability is required before 85% of the contracted rate is to be paid. Articles 3.70-3C, §3A(e) and 20A.18B(e) provide that if the insurer or HMO acknowledges coverage of an insured under the health insurance policy or an enrollee under a health care plan but intends to audit the clean claim, the 85% payment of the contracted rate on the claim is required. The words "insured" and "enrollee" are crucial to the proper interpretation and application of this provision. The statute does not use the words "coverage of the benefit" or "coverage of the service, treatment, or supplies" submitted as a clean claim but rather refers to the individual (i.e., insured/enrollee) who is receiving or has received the service, treatment, or supplies. If a physician or provider has reason to submit a claim to a preferred provider carrier or an HMO the submission of that claim is based on some evidence or action that has informed the physician or provider that the individual insured/enrollee is covered by that preferred provider carrier or HMO, i.e., health insurance card/health care plan card or contact with the HMO or preferred provider carrier via phone, fax, e-mail, or other contact. As for the comment that chargeback or recoupment may not be an option in the case of a high dollar claim paid to an infrequently used physician or provider, House Bill 610, in Articles 20A.18B(e) and 3.70-3C, §3A(e) of the Insurance Code, does not make any exception for the refund provision in the event that the 85% is more than is owed on the claim. Chargeback is one option allowed under the rules, but neither the statutes nor the rules specify that recoupment or chargeback is the only method to obtain a refund.

Comment: Another commenter recommended that a "clean claim" as it relates to hospital claims be defined as consisting "of specified data elements utilized on HCFA claims forms." This definition is necessary because it will be very easy for payors to use "manuals, or other documents, or proper notice" to request additional but non-essential attachments and elements from providers thus producing an even greater problem with timely claims payment and will have the opposite effect the legislation was intended to have.

Response: The department disagrees. HMOs and preferred provider carriers may need information that is not on the HCFA claim form in order to accurately process claims. The rule in §§21.2803(a), (c), and (d), 21.2804, 21.2805, and 21.2806 requires that physicians and providers receive prior notification of any required elements or attachments for a claim to be considered clean, thereby prohibiting HMOs or preferred provider carriers or their delegated claim processors from delaying payment beyond the statutory claims payment period. Requests for additional information do not extend the claims payment period.

§21.2802(6) Contracted rate

Comment: Three commenters recommended changing the definition of "contracted rate" in proposed §21.2802(5) to specifically include "physician or provider group."

Response: The department disagrees because groups of physicians or providers are included in the statutory definitions of physician or provider referenced in §21.2802(17). Because of the addition of "case rate" to §21.2802, the definition of "contracted rate" is redesignated as §21.2802(6).

§21.2802(21) Procedure code

Comment: Three commenters recommended changes to the definition of "procedure code." Two of these commenters recommended expanding the definition to include the payors Medicaid and Medicare when referencing local codes because there are codes in both of these programs that have been created to address services not described by a CPT or HCPC code.

Response: The department agrees, and §21.2802(21) contains the recommended change. Because of the addition of "case rate" to §21.2802, the definition of "procedure code" is redesignated as §21.2802(21).

Comment: Another commenter objected to the proposed definition of "procedure code" because it would allow several different payors to develop different codes for the same service or procedure which could in some instances be unworkable. The commenter requested that the definition be revised to require uniformity.

Response: The department recognizes this issue and anticipates that part of the commenter's concern will be alleviated with the addition of "Medicare" and "Medicaid" to the definition of "procedure code." While there may be some instances that could continue to cause concern, the department does not have the authority to develop standard uniform codes.

§21.2802(25) Statutory claims payment period

Comment: Three commenters recommended changes to the definition of "statutory claims payment period" in proposed §21.2802(24). One commenter stated that while it is true that there are now two claims payment provisions in both Article 3.70-3C and Chapter 20A of the Insurance Code, the statutory penalty in House Bill 610 applies only if claims are not paid within 45 days of receipt of a clean claim. Therefore, subparagraph (A) in proposed §21.2802(24) defining "statutory claims payment period" should be deleted.

Response: The department disagrees with the recommended change but agrees that penalties should not apply if clean claims are not processed within a contracted period of less than the 45 days and agrees that clarifying revisions are needed. However, the penalties do apply in the event of a contracted

claims payment period of less than the 45 days and failure to pay within the 45 days. Therefore, the rule is revised to delete the reference to §21.2802(24)(A) in §21.2807(b) and in §21.2809(a) and to add a sentence to §21.2815 to provide that, "This section shall not apply when there is failure to comply with a contracted claims payment period of less than 45 calendar days as provided in §21.2802(25)(A) of this title (relating to Definitions) and Article 3.70-3C, §3(m) or Article 20A.09(j) of the Insurance Code." Because of the addition of "case rate" to §21.2802, the definition of "statutory claims payment period" is redesignated as §21.2802(25).

Comment: One commenter suggested adding for purposes of clarification "at the address designated by the HMO or preferred provider carrier" following "receipt of a clean claim" in proposed §21.2802(24)(B).

Response: The department disagrees because the commenter's concerns are addressed in §21.2807(a).

Comment: Another commenter recommended that the definition of "statutory claims payment period" include the time within which the 85% of a claim that is audited must be paid and the time when a refund or additional payment is due after the audit is completed.

Response: The department disagrees. The period of time within which the 85% of a clean claim that is audited must be paid is addressed in §21.2807(b) and §21.2809(a). Article 3.70-3C, §3A(e) and Article 20A.18B(e) of the Insurance Code provide that following completion of the audit, any additional payment due the physician or provider or any refund due the HMO or preferred provider carrier shall be made not later than the 30th day after the later of the date that the physician or provider receives notice of the audit results or, if appeal was filed before expiration of the 30-day refund period, the date any appeal rights of the insured/enrollee are exhausted.

Comment: One commenter stated that proposed §21.2802(24)(A) and (B) do not clearly define when the 45-day period starts. The commenter recommended adding the following language "if by electronic transmission, from the date of electronic claims submission acknowledgment; if by certified mail or professional delivery, from date of documented receipt; if by hand delivery, from date of hand delivery."

Response: The department disagrees because the commenter's concerns are addressed in §21.2807(a) and Articles 20A.18B(b) and 3.70-3C, §3A(b) of the Insurance Code.

§21.2803. Elements of a Clean Claim

Comment: Two commenters stated that there are many instances where the patient during the admission process will not provide information on other insurance coverage, and the omission of this information by the patient leaves the hospital vulnerable to the submission of a claim that will be placed in a "pend" status while the payor further investigates the existence of other insurance—sometimes taking up to a year for this investigatory process. Because the hospital is not reimbursed during this process and is unable to pursue payment from the member, the commenters recommended three changes in §21.2803(b) to prevent the claim from being determined "deficient." The commenters recommended revising §21.2803(b)(1)(L) to read: "(L) disclosure of any other health plans (HCFA 1500, field 11d); if respond yes, then the data elements specified in paragraph (3)(A)-(E) . . . are applicable if available; if respond "no" or left blank, the data elements are not considered essential as the information was either unavailable or not applicable and does not render the claim deficient." The commenters recommended similar changes to §21.2803(b)(3)(A) and §21.2803(b)(3)(B). The commenters also recommended revising the second and third sentences of §21.2803(e) to provide that: "If a claim is submitted for covered services or benefits. . . the amounts paid by all other valid coverage is considered to be an element of a clean claim if available to the provider at the time of claim filing. If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision . . . the amount paid by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is considered to be an element of a clean claim if available to the provider at the time of claim filing. The unavailability of this information does not render the claim deficient."

Response: The department agrees that changes are needed to proposed §21.2803(b)(1)(L), (b)(3)(A), (b)(3)(B) and §21.2803(e) but does not agree with the changes recommended by the commenters for several reasons. First, physicians and providers are in the best position for obtaining information from insureds and enrollees about the existence of other health care coverage. Physicians and providers and/or their staff have personal, face-to-face contact with the enrollee/insured and are able to inquire directly about other coverage at the time services are rendered. Additionally, obtaining the information at the time services are rendered should result in the most current information as to the existence and identity of other health care coverage as an individual's health care coverage may change due to several reasons, including the following: their employer may change insurance or HMO carriers or may self-insure; employees and/or their spouses may change employers or may change to another plan offered by the same employer; or enrollees/insureds may purchase or cancel individual or member association group health coverage. Insureds and enrollees purchase or enroll for coverage in addition to the HMO or preferred provider coverage to minimize their financial exposure for payment of medical bills; consequently, it is the department's belief that to avoid having to pay out-of-pocket for medical services, treatments, or supplies, and in order to utilize the coverage for which premiums have been paid, enrollees and insureds have a strong incentive to disclose to the physician or provider all information about all health benefit plans that the physician or provider can look to as a source of payment before seeking payment from the enrollee/insured. In addition, health benefit plans, whether fully insured or self-insured, require, before reimbursement is provided to an enrollee or insured, the submission of claim forms, such as the UB-92, HCFA 1500, or the plan's attending physician/provider statements, many of which are completed and filed by the physician or provider on behalf of the insured or enrollee; thus physicians and providers usually know whether a claim has been submitted to other health benefit plans and can provide information regarding the existence and identity of other coverage. While the department does not agree with the specific recommended revisions to §21.2803(b)(1)(L), (b)(3)(A), and (b)(3)(B), the department recognizes that there are factors which require clarification of and revision to §21.2803(b)(1)(L), (b)(3)(A), and (b)(3)(B) as proposed. These factors include: there may be occasions when enrollees and insureds may not timely provide the information required by §21.2803(b)(3)(A)-(E) to physicians

or providers in order for the physicians and providers to meet claim filing deadlines; enrollees and insurers may not always provide accurate information; and preferred provider carriers and HMOs that have coordination of benefit provisions in their health care plans or insurance policies are also responsible for obtaining this information and are responsible for determining which coverage, when there is more than one coverage, is primary or secondary pursuant to 28 TAC, Chapter 3, Subchapter V, and 28 TAC §11.511(1). Therefore, §21.2803(b)(1)(L) is revised to include these factors.

The revision to §21.2803(b)(1)(L) requires that the following addition be made to §21.2803(b)(3)(A), (B), (C), (D) and (E): ". . . this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element." The department believes that the addition of clauses (i)(I) and (ii) to §21.2803(b)(1)(L) and the revisions to §21.2803(b)(3)(A), (B), (C), (D) and (E) are supported by the fact that most physicians and providers currently obtain or attempt to obtain health care coverage information from their patients (i.e., enrollees and insureds) as a standard business practice. This information is currently collected by physicians and providers at various times and through various means: in the initial or annual office visit questionnaire, in the sign-in sheets patients (i.e., enrollees or insureds) are requested to complete at each office visit, or upon obtaining any service, treatment or supplies from the physician or provider; or as part of the physician's or provider's routine record updating. Physicians and providers can satisfy the requirements of the adopted revisions by simply providing with the claim the documented proof of their attempt to obtain the data element information which could be a copy of the initial or annual office visit questionnaire, sign-in sheets, or other similar document and a signed statement from the enrollee/insured that there is no other health coverage. Under this adopted revision, if the HMO or preferred provider carrier receives with the claim a copy of a document signed by the enrollee/insured that there is no other health care coverage for the provided service, treatment or supplies, the HMO or preferred provider carrier may not consider the claim deficient. Also, if the HMO's or preferred provider carrier's records reflect that the enrollee/insured has other coverage or the HMO or preferred provider carrier subsequently learns through their own research or communication with the enrollee/insured of other coverage for the service, treatment or supplies, the claim may not be considered deficient. If the HMO or preferred provider carrier pays the covered clean claim and subsequently learns that the enrollee/insured has other coverage, the rules do not prohibit the HMO or preferred provider carrier from taking action, including seeking refunds, to obtain the amount paid in overpayment to the physician or provider.

The department also disagrees with the changes recommended to §21.2803(e); however, in considering the comment on the recommended change, the department realized that there is a need to revise §21.2803(e) and, for clarification, to add clause (i)(II) to §21.2803(b)(1)(L), based on the following reasons. A physician or provider could file claims with both the primary and secondary carriers/plans (i.e., payors) at the same time; or if claims are filed at different times, the physician or provider could mistakenly file the claim with the secondary carrier before filing with the primary carrier; or the physician or provider could file with the primary carrier and then file with the secondary carrier before the primary carrier completes its claim processing. The amount paid as a covered claim by the primary plan, either paid pursuant to §21.2807 and Article 3.70-3C, §3A(c)(1) or (2) or Article 20A.18B(c)(1) or (2) or upon completion of an audit pursuant to §21.2809 and Article 3.70-3C, §3A(e) or Article 20A.18B(e) is necessary to the processing of the claim by secondary payors and must therefore be an element of a clean claim. To provide otherwise would increase the administrative cost to HMOs or preferred provider carriers who are secondary payors as they could be required to pay as if they were the primary payor and to seek refunds after receiving information as to the true primary payor and the amount paid as a covered claim by the primary payor. It would also increase the recordkeeping by physicians and providers, and thereby increase their administrative cost, as they would be required to keep records as to which claims submitted to secondary payors reported interim payments by a primary payor, and depending on the primary payors' payments on covered claims, they would have to send corrected claims and possibly refund payments made by secondary payors. Additionally, if the amount paid as a covered claim by the primary payor is not a clean claim element, the secondary payor would not have the full 45-day statutory claims payment period to process the claim but would have only the balance of the 45-day statutory claims payment period, if any, that remained after the primary payor completed processing the claim which could unduly subject an HMO or preferred provider carrier who is the secondary payor to statutory penalties. If a preferred provider carrier or HMO who is the primary payor audits a claim, the 85% payment by the preferred provider carrier or HMO to the physician or provider made pursuant to Article 3.70-3C, §3A(e) and Article 20A.18B(e) is an interim payment and is not an amount paid as a covered claim and therefore may not be entered in field 29 of HCFA 1500 under §21.2803(b)(3)(I) or field 54 of UB-92 under §21.2803(b)(3)(T). Upon completion of the audit, the preferred provider carrier or HMO will determine the amount of payment for the covered claim and either make additional payment to the physician or provider or request a refund in the event of overpayment, and it is at this time that the physician or provider will have the necessary information to complete field 29 of HCFA 1500 under §21.2803(b)(3)(I) or field 54 of UB-92 under §21.2803(b)(3)(T). Thus, in the instance of a claim for which there is a primary payor and a secondary payor, both of which are either an HMO or preferred provider carrier subject to the prompt payment law enacted by House Bill 610 and the department rules implementing that law, and the primary payor HMO or preferred provider carrier audits the claim, a clean claim cannot be filed by the physician or provider with the secondary payor until completion of the audit by the primary HMO or preferred provider carrier and the physician or provider obtains the information necessary to complete field 29 of HCFA 1500 under §21.2803(b)(3)(I) or field 54 of UB-92 under §21.2803(b)(3)(T). The department in recognizing the secondary payors' need to know what final action has been taken on the clean claim by the primary carrier is requiring that the amount paid by the primary payor is a clean claim element for claims submitted to secondary payors. Concomitantly, the department recognizes that while physicians and providers are subject to statutory billing deadlines (Chapter 146, Civil Practice and Remedies Code) and, in some instances, contractual billing deadlines, physicians and providers may not have the information needed (e.g., amount paid on the covered clean claim by the primary carrier) to file a clean claim with secondary payors before the statutory or contractual billing deadline expires. In these situations, the department expects HMOs and

preferred provider carriers to (i) consider a claim that is filed before the expiration of the statutory or contractual deadlines and that contains all other required clean claim elements except for the amount paid by the primary payor to be in compliance with the statutory or contractual billing deadlines; for such claims the statutory claims payment period would not begin until the HMO or preferred provider carrier received from the physician or provider the amount paid by the primary payor (i.e., the element needed to make the claim a clean claim); (ii) administratively waive the contractual billing deadlines when they themselves are the secondary payor; or (iii) revise their contracts to provide an exception to the contractual billing deadlines when they themselves are the secondary payor. HMOs and preferred provider carriers could require that when they themselves are the secondary payor, the physician or provider must comply with the contractual billing deadlines but provide that the billing period for the physician or provider to submit a clean claim would begin on the date the physician or provider receives notice of the primary payor's final action on the claim. Therefore, in lieu of the commenter's recommended change to §21.2803(e), §21.2803(b)(1)(L) is revised to include clause (i)(II) as previously specified and §21.2803(e) is revised.

Also, as a result of the revisions to §21.2803(b)(1)(L) and §21.2803(e), appropriate changes to §21.2803(b)(3)(I) and (b)(3)(T) have been made.

Comment: Seven commenters stated that claims involving coordination of benefits should be considered clean rather than returned as deficient if the physician or provider has provided the best information available at the time the claim is submitted. Additionally the claims should be placed in an "audit" mode rather than denied. Similarly, when a physician or provider submits a claim that may involve pre-existing conditions or eligibility questions, these too should be considered clean if at the time of the claim submission the physician or provider submitted all available information. This will allow physicians and providers to be paid for services rendered in good faith while the plan conducts further research. Pending further investigation, if the plan discovers that it has paid in error for either of these types of claims, then the plan has the right to recover incorrectly paid claims through the process provided in §21.2809.

Response: The department disagrees that claims involving coordination of benefits (COB) should be placed in an audit mode rather than denied if a physician or provider indicates that another HMO or preferred provider carrier is involved, but fails to provide pertinent information regarding that HMO or preferred provider carrier. To place a claim in which COB is at issue in an audit mode could result in undue enrichment to the submitting physician or provider, in that the physician or provider could receive more than 100% of the amount due, as primary and secondary payors who are HMOs or preferred provider carriers would both be required to pay 85% of the claim under the audit procedure of §21.2809. This is distinguished from the scenario in which pre-existing conditions are at issue, in that the physician or provider is receiving at most an interim payment of 85% of the contracted rate on the claim, until the audit is completed, and final determination of claim coverage is made. For those claims that are filed with secondary payors, the amount paid by the primary payor must be a clean claim element for several reasons: (i) If the amount paid as a covered claim by the primary payor is not a clean claim element, the secondary payor would not have the full 45-day statutory claims payment period to process the claim but would have only the balance of the 45-day statutory claims payment period, if any, that remained after the primary payor completed processing the claim which could unduly subject an HMO or preferred provider carrier who is the secondary payor to statutory penalties. (ii) If a preferred provider carrier or HMO who is the primary payor audits a claim, the 85% payment by the preferred provider carrier or HMO to the physician or provider made pursuant to Article 3.70-3C, §3A(e) and Article 20A.18B(e) is an interim payment and is not an amount paid as a covered claim; there is no payment of the claim until the audit is completed. Upon completion of the audit, the preferred provider carrier or HMO will determine the amount of payment for the covered claim and either make additional payment to the physician or provider or request a refund in the event of overpayment, and it is at this time that the physician or provider will have the necessary information to complete field 29 of HCFA 1500 under §21.2803(b)(3)(I) or field 54 of UB-92 under §21.2803(b)(3)(T). (iii) If the amount paid as a covered claim by the primary payor is not a clean claim element, this could result in the submission of claims to secondary payors with incorrect or incomplete information on the amount paid by the primary payor on the claim, which would increase administrative costs to both secondary payors and physicians and providers. Secondary payors could be required to pay as if they were the primary payor and to seek refunds after receiving information as to the true primary payor and the amount paid as a covered claim by the primary payor. Recordkeeping for physicians and providers would increase, as they would be required to keep records as to which claims submitted to secondary payors reported interim payments by a primary payor; and depending on the primary payors' final action, they would have to send corrected claims and possibly refund payments made by secondary payors. With regard to claims that may involve pre-existing conditions, §21.2803(b)(1) as proposed is revised to add another data element (designated as (P)) for the first date of the previous same or similar illness (HCFA 1500, field 15). The information provided in this data element will assist preferred provider carriers in more promptly determining whether there are pre-existing conditions for which there may not be coverage under the health insurance policy for the service, treatment, or supplies submitted as a clean claim and thereby, in some instances, reducing the amount of time required for processing the clean claim or a portion of the clean claim pursuant to Article 3.70-3C, §3A(c) and (e) of the Insurance Code as enacted by House Bill 610 and §§21.2807 and 21.2809. The information provided in this data element will assist HMOs and preferred provider carriers in detecting possible fraud or material misrepresentations on the application for coverage.

Comment: One commenter stated that §21.2803(b) should be clarified to specify that the amount paid by the primary plan is considered to be an element of a clean claim for those claims submitted for covered services in which coordination of benefits is necessary.

Response: Sections 21.2803(a) and 21.2803(b)(3)(I) and (T) provide that in coordination of benefit or non-duplication of benefit situations a clean claim consists of the amount paid as a covered claim by the primary plan or other coverage. However, §21.2803(b)(3)(I) and §21.2803(e) are revised to require that the amount paid as a covered claim by the primary plan or other coverage must be in accordance with §21.2803(b)(1)(L) and must be as required by §21.2803(e), and §21.2803(b)(3)(T)

is revised to require that the amount paid as a covered claim by the primary plan or other coverage must be as required by §21.2803(e). Section 21.2803(b)(3)(I) and (T) are revised as described in this response.

Comment: One commenter observed that §21.2803(e) can be interpreted to require a secondary payor to have primary payor payment information (such as an EOB) before the secondary payor's responsibility can be met. The commenter requested that §21.2803(e) be revised to provide that if a payor is secondary and the required primary payment information is not provided in the claim, then the claim should be considered deficient. The commenter also requested guidance as to whether secondary payors must notify a physician or provider of their secondary status within the 15 day deadline and under what circumstances.

Response: The commenter's interpretation is correct. No revision is necessary because the rule provides that the claim is deficient if the amount paid by the primary payor is omitted. Secondary payors must notify physicians or providers that the claim is deficient as required by §21.2808. The rule makes no exception for secondary payors. As a result of comments, the 15-business-day deadline for notification by the HMO or preferred provider carrier that the claim is deficient has been changed to 45 calendar days in the adopted rule.

Comment: Two commenters requested that §21.2803(e) be revised to require that a copy of the Explanation of Benefits/ Explanation of Payment from the primary carrier be attached to the claim form when it is submitted by the provider to the HMO or preferred provider carrier. This would assist with verifying the amount and service paid by the primary payor and would eliminate confusion.

Response: The department agrees in part and disagrees in part. The department recognizes that the amount paid on the covered claim by the primary payor is necessary for the submission of a clean claim to a secondary carrier; however, the department believes that a copy of the Explanation of Benefits or Explanation of Payment from the primary plan is not the only method by which such information can be verified. HMOs and preferred provider carriers may make the Explanation of Benefits or Explanation of Payment or other verification of the amount paid for the covered claim by the primary plan an attachment under the provisions of §21.2804. The department does not agree that the rules should be so restrictive as to require that a copy of the Explanation of Benefits or Explanation of Payments from the primary carrier be attached to the claim form. The department prefers to allow HMOs and preferred provider carriers to develop and implement the most expeditious means to verify amounts paid for covered claims by primary plans.

Comment: One commenter objected to the proposed "elements of a clean claim" requirements under §21.2803 because there is no mention of or allowance for "other documentation reasonably necessary to process the claim." Article 3.70-3C §3(m) specifically allows for "other documentation reasonably necessary to process the claim" and thereby recognizes that it is possible for a provider to submit a billing with all of the correct and complete data fields, but for other documentation to be "reasonably necessary" before an insurer can reach a coverage determination. Thus, it appears that the "elements of a clean claim" requirements in the proposed rule may be more restrictive than the statutes that they are written to implement, and rules may not be more restrictive than the statutes that they are written to implement.

Response: The department disagrees. Article 3.70-3C, §3(m) does not allow for "other" documentation reasonably necessary to process the claim. Instead, Article 3.70-3C, §3(m) and Article 20A.09(j) provide for "documentation reasonably necessary" to process the claim. This "documentation reasonably necessary" for the HMO or preferred provider carrier to process the claim is explicitly provided for in the definition of clean claim in adopted §21.2802(4). Thus, a claim that contains the information required in §21.2802(4) contains the documentation reasonably necessary to process the claim. Article 3.70-3C, §3A(a) provides that in this section, a clean claim means a completed claim as determined under department rules, submitted by a preferred provider for medical care or health care services under a health insurance policy, and Article 20A.18B(a) provides that in this section, a clean claim means a completed claim as determined under department rules, submitted by a physician or provider for medical care or health care services under a health care plan. In drafting the rules, the department performed extensive statutory research. It is the department's determination that both the plain language and the legislative history of House Bill 610 indicate the intent to alter the current method in which claims are processed and pended before being paid or denied. To make the revision suggested by the commenter to allow for additional information beyond that specified by an HMO or preferred provider carrier to physicians and providers before starting the clock running on the statutory claims payment period would maintain the status quo and would not be consistent with the statutory intent.

Comment: Three commenters recommended that the required clean claim elements in §21.2803(a) contain a provision relating to patient eligibility information as a clean claim element because, according to one commenter, eligibility is a key factor in determining whether or not a claim is payable. One commenter recommended that some provision regarding patient eligibility information as a clean claim element should be included in §21.2803(e). Two commenters stated that the clean claim elements in §21.2803(a) and §21.2803(b)(1), (2), and (3) should include the information necessary to establish coverage and liability under the health insurance policy.

Response: The department disagrees. It is the department's determination that both the plain language and the legislative history of House Bill 610 indicate the intent to alter the current method in which claims are processed and pended before being paid or denied. To make the revisions suggested by the commenters to require the inclusion of information necessary to establish eligibility, coverage, and liability over and above what is included in the rules would maintain the status quo and would not be consistent with the statutory intent.

Comment: A commenter stated that the subscriber's date of birth and gender as required in §21.2803(b)(1)(J) should not be required fields for a clean claim. The date of birth is utilized in assessing the "birthday rule" for coordination of benefits and the carriers request this information from the subscriber. The gender of the subscriber would not be relevant to this process.

Response: The department disagrees. The information may be needed for proper enrollee/insured identification.

Comment: A commenter stated that there is not a clear definition of what constitutes an "attachment." The commenter

suggested that attachments required by Medicare may be a reasonable standard to use.

Response: While the term "attachment" is not defined, §21.2803(c) allows the use of the Medicare standard for attachments. In addition, §21.2804 requires the HMO and preferred provider carrier to identify the attachment "with specificity." This includes specificity as to content and circumstances.

Comment: One commenter stated that it is very important to reiterate the need for the clean claim data elements to be accurate and that the elements need to be in their specified fields for the claims to be considered clean.

Response: The department agrees that it is important and necessary that the claim data elements be accurate and entered into their specified fields for a claim to be considered "clean." Section 21.2803(f) requires that the elements be accurate. Entry into the incorrect field would not be accurate as required by the rule.

§21.2804. Disclosure of Necessary Attachments

§21.2805. Disclosure of Additional Clean Claim Elements

§21.2806. Disclosure of Revision of Data

Comment: Four commenters recommended that the rules be revised to require that additional or revised attachments and data elements are permitted only if there is first mutual agreement between the physician or provider and the HMO or preferred provider carrier, as reflected in the parties' contract or an amendment thereto, and then if proper notice is given to the physician or provider regarding when the new attachments and data elements are effective. Allowing an HMO or preferred provider carrier to unilaterally require extra data elements and attachments merely upon giving notice or specifying so in its manuals and documents is contrary to the express language of House Bill 610 in §18B(j) and §18B(k) of Chapter 20A and §3A(j) and §3A(k) of Article 3.70-3C, ignores the significance of the parties' contractual relationship, and gives payors rights beyond those given by the statute. According to one commenter, the parties' mutual agreement is imperative because the rules do not limit the scope or number of additional attachments or elements an HMO or preferred provider carrier can require and enable a carrier to require the submission of information that is not even relevant to the claims process.

Response: The department disagrees. It is the department's interpretation of Article 20A.18B(j) and (k) and Article 3.70-3C, §3A(j) and (k) that carriers have the option of changing or adding data elements and attachments by contract; by giving written notice 60 days before requiring the data element or attachment, or by providing updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures at least 60 days before requiring the data element or attachment. It is the department's position that the plain language of the subsections support these three options and that this is the proper interpretation because of statutory construction and practical considerations. First, the contract option and the notice option are in separate subsections, i.e., (j) and (k); it is logical that if the intent of House Bill 610 is that there be a single option (i.e., change in contract with 60 days' notice of the change in contract), as urged by the commenters, the two provisions would be in one subsection to indicate this single option. Also, subsection (k) refers to "an" addition or change ("Not later than the 60th day before the date of an addition or change. . . ") rather than "the" addition or change. The use of the word "the" arguably would have referred to the change made by contract pursuant to (j), while a clear reading of the word "an" logically suggests that (j) and (k) are two separate options. Secondly, from a practical standpoint, it does not make sense that a physician or provider would need 60 days' notice of a contract amendment when the physician or provider is one of the parties to the contract. Also, changes in technology, (i.e., new testing, new treatments and procedures, etc.) may require an HMO or preferred provider carrier to frequently change the data elements and attachments needed to process a claim. Therefore, to require HMOs and preferred provider carriers and physicians and providers to constantly have to amend contracts to address new or additional data elements and attachments would be costly, time consuming, and impractical. It would be costly not only to the HMO or preferred provider carrier and the physician or provider but ultimately to the enrollee or insured. Articles 20A.18B(o) and 3.70-3C, §3A(n) authorize the adoption of rules necessary to implement the prompt payment statute; it is the department's position that for the foregoing reasons, the disclosure procedures and options outlined in §§21.2804, 21.2805, and 21.2806 are necessary to implement the statutes and are a proper and reasonable interpretation of the statutes. With regard to HMOs or preferred provider carriers' requesting information that is not relevant to the claims process, the department currently does not have any information to indicate that the potential problem will actually materialize but will monitor HMOs and preferred provider carriers through complaints and examinations to determine if this does occur and will take appropriate action if necessary.

Comment: Three commenters recommended that §21.2804 and §21.2805 be revised to provide that if the parties' contract states that the only mechanism for requiring additional attachments or elements is by the parties' mutual agreement, then the contract controls the addition of elements and attachments, and an HMO or preferred provider carrier cannot circumvent the contract by giving written notice or by providing updated revisions to provider manuals under §§21.2804(1) and (2) and 21.2805(1) and (2).

Response: The department agrees and the rules have been revised accordingly.

Comment: Four commenters stated that the lack of a mechanism for a provider to send attachments electronically will render virtually all electronic claims "not clean" by definition. The commenters recommended that §21.2804 be revised to provide that when the HMO or preferred provider carrier gives notice of the necessary attachments, or provides updated revisions identifying the attachments, or identifies the attachments in the contract, the HMO or preferred provider carrier must provide the attachment in electronic format to the provider or physician to allow the provider or physician to file the attachment electronically.

Response: The department disagrees that electronic claims will be rendered "not clean" by definition due to attachment requirements. Electronically submitted claims are the fastest and most efficient method of processing the majority of claims, and the department does not anticipate that the adoption of these sections will reduce the efficacy or desirability of electronic claims submission. The requirement for the specific identification of attachments in §21.2804 is meant to provide physicians and providers advance notice of what is required for the processing of claims. The department does not expect, and will consider unacceptable, an increase in the number

and volume of attachments from that currently requested by HMOs and preferred provider carriers for all claims simply due to the adoption of these sections. To the extent that currently required attachments may be submitted electronically, that practice should continue. To the extent that it is not feasible for certain attachments to be electronically submitted, presumably such limitation already exists, and is not created by the adoption of these sections. These sections are not intended to alter the method by which claims are submitted or reviewed. They are intended to provide advance notice to all parties of when the prompt-payment-of-claims clock starts to run. If an HMO or preferred provider carrier requires by contract that claims be submitted electronically, the HMO and the preferred provider carrier should provide the physician or provider with the electronic format for filing the claims electronically.

Comment: Eight commenters raised concerns about the rules resulting in payors greatly increasing the paperwork obligation of providers in submitting claims (i.e., submission of attending physician statements, medical records, or progress notes for all likely claim scenarios) to ensure that the information is contained in a clean claim when all of the attachments may not be needed for each and every claim. One commenter stated that this result is not the intended or desired result but appears to be the only one that will allow the insurers and their third party administrators to preserve their rights and those of their insureds under the contract of insurance. Another commenter stated that if claims involving medical review are subject to clean claim payment requirements, carriers will be faced with two equally unappealing options–either risk payment based on billed charges or routinely require medical records as an additional element of a clean claim. Five commenters stated that there may be a problem with payors requiring attachments which are unnecessary, cumbersome, and which would cause undue delay in the claims processing. Another commenter stated that under the proposed §21.2804, a payor could specify the specific circumstances when an attachment is required, but that this could lead to possible fraud where physicians or providers could circumvent the specific requirement by altering their claims submissions.

Response: The intent of the rule is to require attachments to be identified with specificity with regard to the contents of the attachments and the circumstances in which the attachments are required. The department expects HMOs and preferred provider carriers (i.e., payors) to carefully determine the attachments they require and physicians and providers to properly bill and code for the services rendered. The department currently does not have any information to indicate that the potential problem will actually materialize but will monitor complaint trends and take appropriate action if necessary.

Comment: One commenter stated that the practical construct of many preferred provider organization (PPO) arrangements limits the effectiveness of several of the proposed rule provisions that are intended to provide flexibility in the data elements which constitute a clean claim. Where a carrier has contracted with a PPO rather than individual preferred providers themselves, the carrier may have great difficulty in adequately providing the written notice or manuals or other documents setting forth further additional clean claim elements as contemplated under proposed §21.2805, or the revised data elements, attachments, or additional elements under proposed §21.2806. In those situations in which a carrier contracts with a preferred provider organization which itself contracts with individual providers, the proposed rules provide an inadequate methodology by which such carriers may themselves require additional data elements or attachments, revise required data elements or attachments, or revise other procedures involving claims processing.

Response: The department disagrees that any additional rules or methodology are needed to address those situations in which a preferred provider carrier contracts with a PPO which itself contracts with individual providers. Article 3.70-3C, §3A(m) and Article 20A.18B(n) of the Insurance Code, as enacted in House Bill 610, respectively, apply the prompt payment law to a person with whom a preferred provider carrier or an HMO contracts to process claims or to obtain the services of preferred providers to provide medical care or health care to insureds under a health insurance policy and to a person with whom an HMO contracts to process claims or to obtain the services of physicians and providers to provide health care services to enrollees under a health care plan. Article 3.70-3C, §3(l), 28 TAC §3.3703(c) and Article 20A.18C(a)(5) also address the commenter's concerns. Article 3.70-3C, §3(l) provides that an insurer may enter into an agreement with a PPO for the purposes of offering a network of preferred providers in which the agreement may provide that the notice and other insurer contracting requirements may be complied with by either the insurer or the PPO on the insurer's behalf; if an insurer enters into an agreement with a PPO, it is the insurer's responsibility to meet the requirements of Article 3.70-3C or to assure that the requirements are met; and all preferred provider insurance benefit plans offered in this state shall comply with the requirements of Article 3.70-3C. Rule §3.3703(c) provides that an insurer may enter into an agreement with a PPO for the purpose of offering a network of preferred providers, provided that it remains the insurer's responsibility to meet the requirements of Article 3.70-3C and 28 TAC Chapter 3, Subchapter X (Preferred Provider Plans) or ensure that the requirements of Article 3.70-3C and 28 TAC Chapter 3, Subchapter X are met. Article 20A.18C(a)(5) requires an HMO that enters into a delegation agreement with a delegated network to execute a written agreement with the delegated network that contains a provision requiring the delegated network to comply with all statutory and regulatory requirements relating to any function, duty, responsibility, or delegation assumed by or carried out by the delegated network.

Comment: One commenter recommended that §§21.2804, 21.2805, and 21.2806 be revised to require that the 60-day notice shall be sent separately by certified mail, return receipt requested, or by courier delivery with a signed receipt. This provision is needed to resolve any disputes that arise over whether a carrier complied with the notice requirements and to prevent the required notice from being "buried" in other documents sent to the provider.

Response: The department disagrees that the method of delivery of the 60-day notice should be prescribed in the rule. The rule allows HMOs and preferred provider carriers to develop the most effective and efficient method of delivery. The department currently does not have any information to indicate that the potential problem will actually materialize but will monitor complaint trends and take appropriate action if necessary.

§21.2807. Effect of Filing a Clean Claim

§21.2809. Audit Procedures

Comment: One commenter stated that proposed §21.2807(a) leaves open the right of a payor to designate the address

of the payor or delegated claims processor orally, repeatedly, frequently, and inconsistently. The commenter recommended that the rule be revised to require (i) payors to designate in writing the address to which claims should be sent; (ii) that notice of this address be given to providers and to the commissioner in writing; (iii) any claim sent to a payor's address of record with the commissioner be deemed sent to the right place; (iv) the address of record be ascertainable over the internet; and (v) a payor not be able to change its address of record except on 60 days written notice to providers. Alternatively, the commenter recommended that the proposed regulation make clear that the statutory claims payment period begins to run upon a payor's receipt of a claim at an address designated by the payor in accordance with the payor's processing procedure disclosure requirements in §21.2811.

Response: The department agrees in part and disagrees in part. The department does not believe that a change is required because the commenter's concerns in (i), (ii) and (v) are addressed in §21.2811; however, for clarification, §21.2807(a) has been changed to read: "(a) The statutory claims payment period begins to run upon receipt of a clean claim from a physician or provider at the address designated by the HMO or preferred provider carrier, in accordance with §21.2811 of this title (relating to Disclosure of Processing Procedures), whether it be the address of the HMO, preferred provider carrier, or a delegated claims processor. The date of claim payment is as determined in §21.2810 of this title (relating to Date of Claim Payment)." There is, however, with respect to recommendation (ii), no requirement that the address be provided to the commissioner, and the department does not believe that this is necessary. In response to recommendation (iii), there are no statutory or regulatory provisions designating the commissioner as the custodian. In response to recommendation (iv), HMOs and preferred provider carriers have the option of placing this address information on their website even though there is no requirement to do so. However, if HMOs and preferred provider carriers do so, they are still required to provide prior written notice to the provider as required by §21.2811.

Comment: One commenter stated that there is no clear definition of when a claim is considered "received." Without this definition, it would be possible for payors to actually receive paper claims but delay entering them into their claims payment systems as received until days or weeks later, and any reference to any period of time that uses "receipt" as the event that marks the beginning point for the calculation of a period of time is meaningless. The commenter recommended that for electronic claims the date of "receipt" should be the date the provider's claim was electronically submitted to the clearinghouse or other designee, and that the date of "receipt" for paper claims should be the date indicated on the return receipt for claims submitted via certified mail or the date indicated on tracking information available from major delivery companies like Federal Express or seven calendar days from the date the claim was mailed as indicated in field 86 on UB-92.

Response: The department disagrees. The department believes that no changes are necessary because Article 3.70-3C, §3A(b) and Article 20A.18B(b) as enacted by House Bill 610 specify the actions which a physician or provider may take to obtain acknowledgment of receipt of a paper claim and what action the HMO or preferred provider carrier or clearinghouse must take to acknowledge receipt if a claim is submitted electronically. There is nothing that prohibits an HMO or preferred provider carrier and physicians and providers from agreeing to utilize the date indicated on the tracking information available from major delivery companies like Federal Express as the date of receipt of a paper claim. HMOs and preferred provider carriers and physicians and providers could also agree that the date of receipt of a paper claim is seven calendar days from the date the claim was mailed as indicated in field 86 on UB-92. With regard to the concern that payors could actually receive paper claims but delay for days or weeks before entering them into the claims payment system as received, the department will monitor complaints for such non-compliance and take appropriate action if necessary.

Comment: Nine commenters disagreed with proposed §21.2807 and §21.2809(a) relating to the department's interpretation of Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) of the Insurance Code. One commenter stated that the problem with House Bill 610 is that it is "essentially incomplete," and another commenter stated that the statute is "perhaps shortcoming" in addressing determination of liability. One commenter stated that the department's task is "to interpret perhaps an incomplete statute." According to one of the commenters, missing from the statute is the next logical paragraph after subsection (e) in Article 3.70-3C, §3A; that is, the consequence if the insurer is not able to "acknowledge coverage." Two commenters stated that the statute does not speak to the circumstance where the insurer in good faith receives all of the information and elements of the clean claim submitted by the provider in good faith, but there still remains a question of coverage or the insurer needs information from other providers or other sources to determine its liability or to "acknowledge coverage," and the insurer cannot determine or acknowledge coverage within the 45 days. One commenter disagreed with the department's interpretation in the proposed rule that the omission in the statute of those situations when the carrier needs additional information from some party other than the provider indicates a statutory intent to shift the economic burden to the carrier. According to one commenter, while a preferred provider can submit a clean claim that includes all of the required data elements, the carrier may still need additional information that could not be identified until the claim was received. This is frequently the case when issues arise of pre-existing conditions, coverage limitations or coverage exclusions; there may be a need for an operative report; medical records and/or a claimant's statement are needed to resolve issues regarding whether the treatment is medically necessary, whether the treatment is investigational or experimental, whether the treatment is primarily cosmetic, etc.; and police reports as well as many other types of information are needed to resolve a multitude of coverage issues.

Response: The department does not agree that House Bill 610 is incomplete, and it is the department's position that the statutes can be interpreted in a reasonable and logical manner that does not require a determination that the statutes are incomplete. The rules in §21.2807 and §21.2809(a), which are consistent with Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) as enacted in House Bill 610, are based on the interpretation that the statutes can be implemented without the department being required to essentially create new law which the department is not authorized to do. The department is authorized in Article 3.70-3C, §3A(n) and Article 20A.18B(o) to adopt rules as necessary to implement the statute. It is the department's interpretation that Article 3.70-3C, §3A(c) and (e)

and Article 20A.18B(c) and (e), when read in the context of the overall statute, provide five possible actions that may be taken by preferred provider carriers and HMOs when a clean claim is submitted for services, treatments, or supplies rendered or provided to an insured/enrollee of the preferred provider carrier or HMO. The five possible actions are: Within 45 days of the date the clean claim is received, (i) pay the total amount of the claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) deny the claim in its entirety (i.e., not a covered claim); (iii) pay the portion of the claim that is not in dispute (i.e., a covered claim) and deny the remainder of the claim (i.e., not a covered claim); (iv) pay the portion of the claim that is not in dispute (i.e., a covered claim) and audit the remainder of the claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate on the portion of the claim that is being audited (i.e., coverage of the claim not yet determined); or (v) audit the entire claim, and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate (i.e., coverage of the claim not yet determined). Under the statute, these five actions are the only actions available to the HMO or preferred provider carrier upon receipt of a clean claim. The clean claim is intended to provide all of the information to the preferred provider carrier or HMO that is required, pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules, of the physician or provider submitting the clean claim for the services, treatments, or supplies rendered or provided by the physician or provider. If the preferred provider carrier or HMO must obtain information from other sources to process the clean claim in whole or in part, the statute in Article 3.70-3C, §3A(e) and Article 20A.18B(e) requires the preferred provider carrier or HMO to pay 85% of the contracted rate on the claim while collecting and reviewing this additional information if such collection and review cannot be completed within 45 days of receiving the clean claim. Therefore, all clean claims (as defined by department rules) that are submitted to preferred provider carriers or HMOs are included in the statutory scheme, including clean claims which require more than 45 days to determine liability. It is the department's interpretation, based on the plain language of the statute and legislative intent, that during the period in which the preferred provider carrier or HMO is investigating or reviewing the clean claim, collecting additional information, or taking any other action with regard to the clean claim to make a final determination of the amount owed on the claim (i.e., auditing) the intent of the statute is to partially shift the economic burden to preferred provider carriers or HMOs in lieu of the current situation in which the economic burden is borne solely by physicians or providers. This is supported by Article 3.70-3C, §3A(e) and Article 20A.18B(e) which require the physician or provider at the completion of the audit to make any refunds due to the preferred provider carrier or HMO. The statute is based on the concept that once a physician or provider has submitted a "clean claim" and thereby provided all of the information required, pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules, of that physician or provider for the services, treatments, or supplies rendered to the insured/enrollee of the preferred provider carrier or HMO, the preferred provider carrier or HMO must pay 85% of the contracted rate on the clean claim to that physician or provider if the preferred provider carrier or HMO audits the clean claim and cannot complete the audit within the 45 days; the physician or provider is no longer required to wait to receive any payment for the services, treatment, or supplies that he/she has rendered until the preferred provider carrier or HMO has collected any other necessary information from other sources and fully resolved all of the issues related to the payment of the clean claim (e.g., operative reports, medical records, a claimant's statement and authorization, police reports, etc., which may be needed to resolve issues on pre-existing conditions, coverage limitations or exclusions, medical necessity, whether treatment is investigational or experimental, or primarily cosmetic, etc.). If at the completion of the audit, the preferred provider carrier or HMO determines that a claim or a portion of a claim is not covered, Article 3.70-3C, §3A(e) and Article 20A.18B(e), as enacted in House Bill 610, clearly provide for the refund of any amounts due to the preferred provider carrier or HMO. With regard to the comments on the omission from House Bill 610 of the "next logical paragraph" after subsection (e) in Article 3.70-3C, §3A (if the insurer is not able to "acknowledge coverage") and of those circumstances where the insurer needs more than 45 days to "acknowledge coverage," the department does not agree. Article 3.70-3C, §3A(e) states, "If the insurer acknowledges coverage of an insured under the health insurance policy but intends to audit. . . ." (emphasis added), and Article 20A.18B(e) states, "If the health maintenance organization acknowledges coverage of an enrollee under the health care plan but intends to audit. . . ." (emphasis added). The use of the words "insured" and "enrollee" is crucial to the proper interpretation and application of Article 3.70-3C, §3A(e) and Article 20A.18B(e), respectively. The statutes do not use the words "coverage of the benefit" or "coverage of the service, treatment or supplies submitted as a clean claim" but rather refer to the individual insured/enrollee who is receiving or has received the service, treatment, or supplies. It is the department's position that if a physician or provider has reason to submit a claim to an HMO or preferred provider carrier, the submission of that claim is based on some evidence or action that has informed the physician or provider that the insured/enrollee is covered by that preferred provider carrier or HMO, i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact. With regard to the comment that a physician or provider can submit a clean claim that includes all of the required data elements but the HMO or preferred provider carrier may still need additional information that cannot be identified until the claim is received, including when issues arise of pre-existing conditions, the department recognizes the need of HMOs and preferred provider carriers to obtain as much information as possible in the clean claim. Therefore, to assist preferred provider carriers in more promptly determining whether there are pre-existing conditions, §21.2803(b)(1) is revised to add another essential data element (designated as (P)) for the first date of the previous same or similar illness (HCFA 1500, field 15). Under adopted §21.2803(b)(1)(P), unless otherwise agreed to by contract, this data is necessary for claims filed by physicians or providers. The information provided in this data element will assist preferred provider carriers in more promptly determining whether there are pre-existing conditions for which there may not be coverage under the health insurance policy for the service, treatment, or supplies submitted as a clean claim, thereby, in some instances, reducing the amount of time required for processing the clean claim or a portion of the clean claim pursuant to Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) and §§21.2807 and 21.2809. The information provided in this data element will assist HMOs and preferred provider carriers in detecting possible fraud or material misrepresentations on the application for coverage.

Comment: Several commenters objected to the department's interpretation of Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) because the rules are beyond the clear intent and scope of House Bill 610, are inconsistent with the statute, or are more restrictive than the statute. One commenter stated that the requirement that a carrier must pay 85% of the contracted rate on the claim if the carrier is unable to secure all the information reasonably necessary to determine liability or coverage within the statutory claims payment period appears to be beyond the clear intent and scope of House Bill 610 and may be more restrictive than the underlying statutes, and rules may not be more restrictive than the statutes that they are written to implement. Another commenter stated that nowhere in Article 3.70-3C, §3A(c) or in any part of Article 3.70-3C, §3A, Article 3.70-3C(m) or Article 20A.18B is there any mention of a requirement to pay 85% of the contracted rate on a clean claim within 45 days if a final claim determination cannot be reached in that time frame. One commenter objected to the "pay first and ask questions later" approach of the rules. One commenter stated that House Bill 610 and the new §3A of Article 3.70-3C contemplate situations in which a carrier acting in good faith could dispute a claim and neither acknowledge nor deny coverage. According to the commenter, in these instances the statute imposes on the carrier only the burden to notify the provider why the claim will not be paid within the statutory payment period, and requires the carrier to pay the charges submitted at the 85% rate only in those circumstances in which the insurer acknowledges coverage. The proposed rules appear to require the carrier in these circumstances to either acknowledge or deny coverage within the statutory claims payment period, or, upon being unable to do so, to pay 85% of the contracted rate on the claim.

Response: The department disagrees. The requirement that an HMO or preferred provider carrier pay 85% of the contracted rate of the clean claim if the HMO or preferred provider carrier is unable to secure all the information reasonably necessary to determine liability or coverage within the statutory claims payment period is supported by the plain language of House Bill 610. The requirement in Article 3.70-3C, §3A(e) and Article 20A.18B(e) that the preferred provider carrier and HMO pay 85% of the contracted rate on a clean claim that the preferred provider carrier or HMO intends to audit is one of five possible actions that may be undertaken by a preferred provider carrier or HMO upon receipt of a clean claim. The five possible actions under Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) are: Within 45 days of the date the clean claim is received, (i) pay the total amount of the claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) deny the claim in its entirety (i.e., not a covered claim); (iii) pay the portion of the claim that is not in dispute (i.e., a covered claim) and deny the remainder of the claim (i.e., not a covered claim); (iv) pay the portion of the claim that is not in dispute (i.e., a covered claim) and audit the remainder of the claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate on the portion of the claim that is being audited (i.e., coverage of the claim not yet determined); or (v) audit the entire claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate (i.e., coverage of the claim not yet determined). Under the statute, these five actions are the only actions available to the HMO or preferred provider carrier upon receipt of a clean claim. Thus, under the statute, if an HMO or preferred provider carrier does not pay the total amount of the clean claim in accordance with the contract between the physician or provider and the preferred provider carrier or HMO, deny the clean claim in its entirety; or pay a portion of the clean claim that is not in dispute and notify the physician or provider why the remainder of the claim is denied, the only other option available to the HMO or preferred provider carrier under the statute is to "audit" the clean claim or a portion of the clean claim if the HMO or preferred provider carrier is unable to determine within 45 days of the receipt of the clean claim whether the clean claim or portion of the clean claim is covered. Therefore, the 85% requirement in §21.2807 and §21.2809(a) is supported by the language of the statute. There is no language in the statute that omits any claims from the application of the prompt payment law because the HMO or preferred provider carrier needs more than 45 days to determine coverage of the claims. The department disagrees that House Bill 610 would allow an HMO or preferred provider carrier acting in good faith to dispute a clean claim and neither acknowledge nor deny coverage of an enrollee/insured. Article 3.70-3C, §3A(e) requires the preferred provider carrier to pay 85% of the contracted rate on the claim if the preferred provider carrier intends to audit the clean claim. Article 20A.18B(e) requires the HMO to pay 85% of the contracted rate on the claim if the HMO intends to audit the clean claim. It is the department's position that if a physician or provider has reason to submit a claim to an preferred provider carrier or HMO the submission of that claim is based on some evidence or action that has informed the physician or provider that the insured/enrollee is covered by that preferred provider carrier or HMO, i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact. Under Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e), the preferred provider carrier or the HMO, either upon receipt of a clean claim that does not require an audit or upon completion of an audit of a clean claim, may deny the claim upon determination that the claim is not covered by the preferred provider carrier or HMO.

Comment: Several commenters objected to §21.2807 and §21.2809 as being inconsistent with the statute because of the application of audit provisions to pended claims. One commenter stated that applying the audit provisions in §21.2807 and §21.2809(a) to pended claims is inconsistent with the statutory language of Article 3.70-3C, §3A(e) because under this section the audit provisions do not apply unless "the insurer acknowledges coverage of an insured under the health insurance policy but intends to audit the preferred provider claim." One commenter recommended, along with revising the rule to use a more commonly accepted definition of audit which contrasts it to the ordinary claims processing procedure, revising proposed §21.2809(a) to provide that: "If an HMO or preferred provider carrier is unable to pay or deny a clean claim, in whole or in part, because of an audit, within the statutory claims payment period specified in §21.2802(24)(A) or (24)(B) of this title (relating to Definitions), the unpaid portion of the claim shall be classified as an audit, and the HMO or preferred provider carrier shall pay 85% of the contracted rate (on the unpaid portion) of the clean claim within the statutory claims payment period." One commenter stated that carriers should not be required to meet the 45-day time frame or pay 85% of the contracted amount for a claim that may not be covered if they have made reasonable and timely efforts to obtain the information needed to reach a determination. One commenter stated that claims where liability is not clear

should be pended and should be excluded from the clean claim payment requirements. A commenter stated that §3A(e) of Article 3.70-3C specifically acknowledges the determination of liability before the provisions of §3A apply. Under §3A(e), if the charges submitted are not covered by the policy, there is no liability under the policy and there is no coverage for the provider's charges. One commenter stated that the phrase "if the insurer acknowledges coverage" in combination with the phrase "under the health insurance policy" means the insurer must acknowledge that liability under the policy exists, and if the insurer does not have that liability for particular charges, then the obligation to pay and pay timely to a provider never arises. Once the liability under the insurance policy is established, then the obligation to pay the provider or deny the claim in the time periods of the rule should apply. Another commenter recommended revising §21.2807(b)(3) to add the following underlined language: "If the insurer acknowledges coverage of an insured under the health insurance policy, but intends to audit the preferred provider claim, the carrier shall notify the physician or provider in writing that the entire clean claim will be audited and pay 85% of the contracted rate on the claim to the physician or provider; or . . . ."

Response: The department disagrees. It is the department's position that the rules are consistent with the statute in applying the audit provisions to pended clean claims and the inclusion of the language in Article 3.70-3C, §3A(e) that, "If the insurer acknowledges coverage of an insured under the health insurance policy but intends to audit. . . . " (emphasis added) and in Article 20A.18B(e) that, "if the health maintenance organization acknowledges coverage of an enrollee under the health care plan but intends to audit. . . ." (emphasis added) does not change that. The use of the words "insured" and "enrollee" is crucial to the proper interpretation and application of Article 3.70-3C, §3A(e) and Article 20A.18B(e). The statutes do not use the words "coverage of the benefit" or "coverage of the service, treatment or supplies submitted as a clean claim" but rather refer to the individual insured/enrollee who is receiving or has received the service, treatment, or supplies. It is the department's position that if a physician or provider has reason to submit a claim to an HMO or preferred provider carrier the submission of that claim is based on some evidence or action that has informed the physician or provider that the insured/enrollee is covered by that preferred provider carrier or HMO, i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact. Furthermore, if the audit provisions do not apply to pended claims then these claims are either not included under the statute and the prompt payment law does not apply to such claims or the determination of claim liability would have to be an element of a clean claim. Neither one of these other possible interpretations is supported by the plain language of the statute or the legislative history. Both the language and the legislative history of House Bill 610 indicate the intent to enact a law that changes the current method of processing claims. There is nothing in House Bill 610 or the legislative history to indicate the omission from the new prompt payment laws of those claims for which there is a dispute about whether or not there is a covered benefit, service, or treatment involved. To make the determination of liability for the claim a "clean claim" element would simply be a continuation of the status quo and would not be consistent with the intent of the legislature to change the current method of processing claims. The department does not agree with the commenter's recommended revision to proposed §21.2809(a) to add the words "because of an audit" and to delete the words "on the unpaid portion" in concert with revising the rule to use a more commonly accepted definition of audit because it is the department's position that both the language and legislative history of House Bill 610 support the department's interpretation of both the actions required of the insurer or HMO upon receipt of a clean claim in Article 3.70-3C, §3A(c) or Article 20A.18B(c) and the audit provisions in Article 3.70-3C, §3A(e) or Article 20A.18B(e).

Comment: One commenter stated that they have done legislative research and listened to all of the tapes containing legislative discussion on House Bill 610 and that they did not find a discussion that audit provisions apply to pended claims and that it is not clear that these claims are subject to the clean claims rule.

Response: The department disagrees. The department believes that the discussion on the tapes along with the lack of any no specific provision in House Bill 610 that omits pended claims from the audit provisions support the department's interpretation that all claims submitted by contracted physicians and providers to preferred provider carriers and HMOs are included within the prompt payment provisions of Article 3.70-3C, §3A and Article 20A.18B as enacted by House Bill 610 and are therefore subject to the rules adopted by the department to implement these statutes. In outlining the purpose of House Bill 610 to the House Insurance Committee at its March 30, 1999, hearing on the bill, Representative Kyle Janek of Houston, sponsor of the bill, stated ". . . we see oftentimes when insurance companies, HMOs, PPOs, will drag out the payment process. And in doing so, they are able to sit on large sums of money for a longer period of time while they earn the interest on that. . . ." Representative Janek also told the committee that many smaller hospitals in rural areas "run on a fairly short cash flow margin, and it is important for them to be able to keep the doors open. . . . I think that if the services are provided, then somebody should pay their bill. . . . the fact is that many insurance companies drag these things out for the purpose of sitting on the float. I wish . . . it did not have to be a legislative fix. . . ." but as long as insurance companies and HMOs are covering people, "I feel that they ought to pay their debt. . . ." Representative Craig Eiland of Galveston, vice chair of the House Committee on Insurance, also explained at the March 30 hearing what he perceived to be the need for the bill based on testimony presented at a House Insurance subcommittee hearing held during the interim in Fort Worth. Representative Eiland stated that the problem for providers and doctors is that when they send in a claim, they are not being paid, and that even with the "fax confirmation" of receipt of the claim, the carriers are saying, "'Well, we can't find it.' And they drag it out either for the float or for whatever purpose, and the doctor ends up waiting six months to nine months before they collect on a clean claim. . . ." (Hearing on House Bill 610 before the House Committee on Insurance, 76th Leg., R.S., Tape 1A (March 30, 1999)).

Comment: One commenter objected to the inconsistency of the rules with House Bill 610 because House Bill 610 seems to create a distinction between disputed clean claims and audited claims and only requires 85% payment if a claim will be audited and the statute does not require payment of disputed claims. The commenter stated that the rules do not consistently recognize a distinction between a disputed claim and an audit and could require a payor to pay 85% of the disputed portion

of a clean claim as well as 85% of an audited claim. According to the commenter, in failing to clearly recognize the distinction between disputed claims and an audit, the rules could have an unintended adverse economic effect on payors by requiring them to pay 85% of a disputed claim. In addition, there will be an intended adverse economic impact if payors receive an administrative penalty for failure to pay 85% of a disputed claim.

Response: The department disagrees that the rules are inconsistent with the statute in addressing "disputed" clean claims and "audited" claims. The statute does not mention "disputed" claims at all. Article 3.70-3C, §3A(c)(2) and Article 20A.18B(c)(2) address claims that are "not in dispute." The statute speaks only to claims for which the total amount is paid in accordance with the physician/provider-carrier contract; claims for which the portion not in dispute is paid and the remainder is denied; claims for which the portion not in dispute is paid and the remainder is audited; claims which are denied; and claims which are audited. The rules do not distinguish between a "disputed" claim and an "audited" claim because the statute as enacted by House Bill 610 does not make such a distinction. Any "unintended adverse economic effect" on payors because of the requirement to pay 85% during the auditing of the clean claim is the result of the legislative enactment of House Bill 610. The administrative penalties for failure to pay 85% during the auditing of a clean claim are also the result of the legislative enactment of House Bill 610.

Comment: Three commenters objected to the fact that if a plan is unable to determine liability within 45 days, the only option in some instances will be to deny the claim. For example, because a plan would not be able to determine within 45 days whether or not a claimant over 19 years old (but under 25 years old) is a full-time student and therefore covered under the plan, the only option available under the rule is to deny the claim. This is because in the event that the care is provided out-of-network, recoupment is not an option (because the plan may not have another payment to that provider for many years) and the plan would be left "holding the bag" if they have to pay 85%. The commenters questioned whether carriers that are obligated to deny the claim as the only option are subject to other provisions of the Insurance Code in not dealing in good faith or denying a claim when it really should be pended, suspended, or disputed.

Response: The department disagrees that if an HMO or preferred provider carrier is unable to determine liability within 45 days, the only option in some instances will be to deny the claim. It is the department's interpretation that Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) provide five possible actions that may be taken by HMOs and preferred provider carriers when a clean claim is submitted for treatment or services provided to an insured/enrollee of the preferred provider carrier or HMO. The five possible actions are: Within 45 days of the date the clean claim is received, (i) pay the total amount of the claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) deny the claim in its entirety (i.e., not a covered claim); (iii) pay the portion of the claim that is not in dispute (i.e., a covered claim) and deny the remainder of the claim (i.e., not a covered claim); (iv) pay the portion of the claim that is not in dispute (i.e., a covered claim) and audit the remainder of the claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate on the portion of the claim that is being audited (i.e., coverage of the claim not yet determined); or (v) audit the entire claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate (i.e., coverage of the claim not yet determined). Therefore, whenever the preferred provider carrier or HMO requires more than 45 days to process a clean claim or a portion of the clean claim, whatever the reason, under the statute the preferred provider carrier or HMO is required to pay 85% of the contracted rate. Thus, there would never be an instance under the statute or the rules when the only option would be to deny the clean claim unless the preferred provider carrier or HMO within 45 days of receiving the clean claim determined that the clean claim was for non-covered service, treatment, or supplies or the insured/enrollee was no longer covered by the preferred provider carrier or HMO. Preferred provider carriers and HMOs who deny coverage for clean claims for which the preferred provider carrier or HMO is liable will continue to be subject to all of the provisions of the Insurance Code that address such violations. In the specific example cited by the commenter, neither the statute nor the rules would apply because in the example, the care rendered to the 19-year old claimant is by an "out-of-network" provider, and the statutes and rules apply only to contracted physicians or providers. Article 3.70-3C, §3A(m) and Article 20A.18B(n) of the Insurance Code, as enacted by House Bill 610, provide, respectively, that the prompt payment statute applies to a person with whom an insurer contracts to obtain the services of preferred providers to provide medical care or health care to insureds under a health insurance policy, and applies to a person with whom an HMO contracts to obtain the services of physicians and providers to provide health care services to health care plan enrollees. The rules in §21.2801 provide that the rules in the subchapter apply "to all paper and electronic claims submitted by contracted physicians or providers for services or benefits provided to insureds of preferred provider carriers and enrollees of health maintenance organizations. . . . " (emphasis added).

Comment: One commenter stated that it is not fair or equitable that the rules impose a penalty to pay 85% if the carrier cannot get additional information from some party other than the provider within 45 days. The commenter cited Article 21.21 which says that prompt payment must be prompt, fair, and equitable. The proposed rules clearly provide for prompt payment but what is missing is fair and equitable. Another commenter stated that requiring a carrier to make payment for something that is not owed appears to be a fundamentally flawed interpretation of the statute.

Response: It is the department's position that the rules are consistent with Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code as enacted by House Bill 610. Article 21.21, which prohibits unfair methods of competition or unfair or deceptive acts or practices, has been in existence since 1951 and was last amended in 1995. Article 21.21, §4(10) defines unfair claims settlement practices as engaging in any of a statutorily specified list of acts with respect to a claim by an insured or beneficiary. One of the "unfair settlement practices" specified in §4(10) of Article 21.21 is "failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear." It is the department's position that Article 21.21, §4(10) does not apply to claims by contracted physicians or providers acting on their own behalf pursuant to their contract with the HMO or preferred provider carrier. It is the department's position that the legislature determined that the situation of delays in claims payments to physicians

and providers of HMOs and preferred provider carriers required a remedy and enacted House Bill 610 as the remedy. Both the language and legislative history of House Bill 610 indicate the intent to change the current method of processing claims. After a clean claim is filed with the insured's preferred provider carrier or the enrollee's HMO, the amount owed on the clean claim is arguably an amount that is in dispute; it may belong to the physician or provider for the services already rendered to the insured/enrollee or it may continue to be held by the preferred provider carrier or HMO for payment of future claims if the services, treatment, or supplies submitted as a clean claim or portion of a clean claim are not covered. It is the department's interpretation that during the period in which the preferred provider carrier or HMO is investigating or reviewing the clean claim, collecting additional information, or taking whatever other action is necessary to make a final determination of the amount owed on the clean claim (i.e., auditing) the intent of the statute is to partially shift the economic burden to preferred provider carriers and HMOs in lieu of the current situation in which the economic burden is borne solely by physicians and providers. The statute is based on the concept that once a physician or provider has submitted a "clean claim" and thereby provided all of the information required, pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules, of that physician or provider, for the services, treatment, or supplies provided to the insured/ enrollee of the preferred provider carrier or HMO, the preferred provider carrier or the HMO must pay an interim payment of 85% of the contracted rate on the clean claim to that physician or provider if the preferred provider carrier or HMO intends to audit the claim and cannot complete the audit within 45 days. The physician or provider is no longer required to wait to receive any payment for the services, treatment, and/or supplies that he/she has provided until the HMO or preferred provider carrier has fully resolved all of the issues related to the payment of the clean claim (e.g., pre-existing conditions, coverage limitations or exclusions, operative reports, medical records from other providers, medical necessity, experimental or cosmetic procedures, police reports, etc.). If at the completion of the audit, the preferred provider carrier or HMO has overpaid the physician or provider, §21.2809(b) in accordance with Article 3.70-3C, §3A(e) and Article 20A.18B(e) provides for the refund of any overpayment due to the preferred provider carrier or HMO; therefore, under the plain language of the statute, the 85% payment is not a penalty. Thus, the department does not agree that the implementation of the statute by the rules is unfair, inequitable, or flawed or that the 85% payment required by Article 3.70-3C, §3A(e) and Article 20A.18B(e) is a penalty.

Comment: One commenter stated that the later refund of any overpayment does not change the fact that the rule requires 85% payment whether the insurer is liable or not.

Response: The rules are consistent with Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) of the Insurance Code. The statute and the rules require an interim payment of 85% of the contracted rate on the clean claim or a portion of the clean claim if the preferred provider carrier or HMO intends to audit the clean claim or a portion of the clean claim and the audit cannot be completed within 45 days. After a clean claim is filed with the insured's preferred provider carrier or the enrollee's HMO, the amount owed on the clean claim is arguably an amount that is in dispute; it may belong to the physician or provider for the services already rendered or it may continue to be held by the preferred provider carrier or HMO for the payment of future claims if the services, treatment, or supplies submitted as a clean claim or portion of a clean claim are not covered. The interim payment of 85% is not the end of the clean claims process but is rather an interim shifting of the economic burden from the physician or provider to the preferred provider carrier or HMO until the final determination of the actual amount owed on the clean claim. Upon this final determination, the statute and the rules provide for the physician's or provider's refund to the preferred provider carrier or HMO of any overpayment and for the preferred provider carrier's or HMO's payment of any additional amounts owed the physician or provider. There is a difference between an 85% payment which is a final payment with no refund in the event of overpayment and an interim 85% payment with the requirement of a refund in the event of overpayment.

Comment: One commenter recommended revising the rule to allow the 45 day deadline to commence after it is determined that a clean claim requires medical review, provided the preferred provider organization makes that determination within 30 days of receipt of the claim. If the preferred provider organization determines that the claim is clean and does not require medical or eligibility review, the 45 day deadline would be in effect.

Response: The department disagrees. The recommended revision is not authorized by House Bill 610. Article 3.70-3C, §3A(e) and Article 20A.18B(e) provide that not later than the 45th day after the date that the preferred provider carrier or HMO receives the clean claim from the physician or provider, the preferred provider carrier or HMO shall pay the charges submitted at 85% of the contracted rate on the claim if the preferred provider carrier or HMO intends to audit the claim. The statute does not contain any specific omission from the 45 day deadline of clean claims requiring medical or eligibility review; to provide such an omission would result in promulgation of a rule that is not authorized by the statute.

Comment: One commenter stated that if an insurer or third party administrator unreasonably delays the determination of liability, Article 21.21, §4(10) provides the remedy for that problem.

Response: House Bill 610 as enacted by the 76th Legislature in 1999 is the most recent enactment of the legislature that addresses how physician or provider claims are to be processed. House Bill 610 does this through providing a means for the specification of elements and attachments which must be submitted by a physician or provider to a preferred provider carrier or HMO for a claim to be "clean" (i.e., department rules); specifying the actions that a preferred provider carrier or HMO must take after receiving a clean claim; and providing the penalties for preferred provider carriers or HMOs that violate the required statutory actions and deadlines for processing "clean claims." Article 21.21 which prohibits unfair methods of competition or unfair or deceptive acts or practices has been in existence since 1951 and was last amended in 1995. Article 21.21, §4(10) defines unfair claims settlement practices as engaging in any of a statutorily specified list of acts with respect to a claim by an insured or beneficiary. It is the department's position that Article 21.21, §4(10) does not apply to claims by contracted physicians or providers acting on their own behalf pursuant to their contract with the HMO or preferred provider carrier. The department does not have the authority to change or ignore the physician or provider claim requirements and penalties enacted in House Bill 610 because of the existence of Article 21.21, §4(10).

Comment: Two commenters stated that the rules ignore the contract of insurance between the carrier and the insured. One commenter stated that the contract between the insurance company and the insured, not the preferred provider organization contract, determines the liability of the insurer to its insured. The insurer, or its third party administrator (TPA) on behalf of the insurer, has the right under the insurance policy to make the determination of liability. The requirement in the rule for the TPA or insurer to determine payment without allowing for a prior determination of liability is an interference with and violation of the rights of the insurer and its TPA and the insurer's insured under the contract of insurance. In determining liability, the TPA owes a duty to the insurer to properly interpret and carry out the terms of the policy. The insurer or TPA owes a fiduciary duty to the insured to make a full investigation of relevant documents. The proposed rules require the insurer or TPA to make a determination of payment without allowing for this prior, careful determination of liability. Another commenter stated that the rule in §21.2809 which requires the insurer to pay 85% of the claim whether the insurer is liable or not under the health insurance policy ignores the fundamental health insurance policy contract and perhaps impairs that contract between the insurance company and the insured.

Response: The department disagrees. It is the department's position that the rules are consistent with Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code as enacted by House Bill 610. It is the department's position that the legislature determined that the situation of long delays in health insurance or HMO payments to physicians or providers required a remedy and enacted House Bill 610 as the remedy. Both the language and legislative history of House Bill 610 indicate the intent to change the current method by which claims are processed and pended. House Bill 610 does not contain any provisions that interfere with the right of the preferred provider carrier or HMO to determine its liability to its insured/enrollee or that affect the conditions under which a physician or provider claim is to be paid but instead provides a means for the specification of elements and attachments which must be submitted by a physician or provider to a preferred provider carrier or HMO for a claim to be "clean" (i.e., department rules); specifies the actions that a preferred provider carrier or HMO must take after receiving a clean claim; and provides the penalties for preferred provider carriers or HMOs that violate the required statutory actions and claims periods for processing "clean claims." These rules which are necessary to implement House Bill 610 also do not contain any provisions that interfere with the right of the preferred provider carrier or HMO to determine its liability to its insured/enrollee or that affect the conditions under which a clean claim is to be paid. Article 3.70-3C, §3A(e) and Article 20A.18B(e) specify an interim payment to the physician or provider of 85% of the contracted rate on a claim that is submitted which contains the elements of a "clean claim" under department rules, and which the preferred provider carrier or HMO intends to audit, and provides, upon completion of the audit, for a refund in the event of overpayment and for additional payment in the event of underpayment. Based on the following analysis, the department does not agree that this interim payment interferes with the duty the TPA owes the preferred provider carrier or HMO to properly interpret and carry out the terms of the policy or health care plan or that the requirement that the interim payment be made ignores or impairs the contract between the insurance company and the insured (i.e., insurance policy) or the contract between the HMO and the enrollee (i.e., health care plan). It is the department's position that if a physician or provider has reason to submit a claim to an HMO or preferred provider carrier the submission of that claim is based on some evidence or action that has informed the physician or provider that the insured/enrollee is covered by that preferred provider carrier or HMO, (i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact). The preferred provider carrier and the HMO have collected premiums from the insured/enrollee and have agreed to pay for all covered services, treatments, and/or supplies in accordance with the insurance contract or health care plan. The preferred provider carrier and the HMO have also contracted with the physician or provider to pay for services, treatments, and supplies that are rendered to the insured/enrollee. After a clean claim is filed with the insured's preferred provider carrier or with the enrollee's HMO, the amount owed on the clean claim is arguably an amount that is in dispute; it may belong to the physician or provider for the services already rendered to the insured/enrollee or it may continue to be held by the preferred provider carrier or HMO for the payment on future claims if the services, treatments, and/or supplies are not covered. The interim payment of 85% of the contracted rate on the clean claim while the preferred provider carrier or HMO is determining coverage of the claim is not a final payment and, by statute, is to be returned to the preferred provider carrier or HMO upon the preferred provider carrier's or HMO's determination that the claim is not covered under the health insurance policy or health care plan. The preferred provider carrier's or HMO's interim payment to physicians and providers that have rendered services, treatments, and/or supplies to the insured/enrollee, for whom the physician or provider has some evidence (i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact) that the insured/enrollee is covered by that preferred provider carrier or HMO does not interfere with or violate the rights of the preferred provider carrier and its TPA and the insured under the insurance contract or the rights of the HMO and its TPA and the enrollee under the health care plan. The preferred provider carrier and HMO have agreed to pay these physicians and providers upon the rendering of services, treatments, and/or supplies to the insured/enrollee. The fact that the interim payment amount may be in the temporary possession of the insured's/enrollee's physician or provider while the preferred provider carrier or the HMO determines the actual amount to be paid under the policy or evidence of coverage does not interfere with or violate the rights of the preferred provider carrier and its TPA and the insured under the insurance contract or the HMO and its TPA and the enrollee under the health care plan because the amount owed on the clean claim is ultimately determined in accordance with the insurance contract or health care plan. It is important to the insured/enrollee that these physicians and providers not be required to wait for long periods of time to receive payment for the services, treatment, and/or supplies that they have rendered because the insured/enrollee needs to be able to continue to obtain medical treatment from these physicians and providers. It is the department's interpretation that during the period in which the preferred provider carrier or HMO is investigating or reviewing the clean claim, collecting additional information, or taking whatever other action is necessary to make a final determination of the amount owed on the clean claim (i.e., auditing), and such cannot be done within 45 days of receiving the clean claim, the intent of the statute is to partially shift the

economic burden to preferred provider carriers and HMOs in lieu of the current situation in which the economic burden is borne solely by physicians and providers. The statute is based on the concept that once a physician or provider has submitted a "clean claim" to a preferred provider carrier or HMO and thereby provided all of the information required of that physician or provider, pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules, for the service, treatment, and/or supplies provided to the insured/enrollee, the preferred provider carrier or HMO must pay an interim payment of 85% of the contracted rate on the claim to that physician or provider if the preferred provider carrier or HMO intends to audit the clean claim and cannot complete the audit within 45 days; the physician or provider is no longer required to wait to receive any payment for the services, treatment, and/or supplies that he/she has rendered until the preferred provider carrier or HMO has fully resolved the issues related to the payment of the clean claim (e.g., pre-existing conditions, coverage limitations or exclusions, operative reports, medical records from other providers, medical necessity, experimental or cosmetic procedures, police reports, etc.). Upon completion of the audit, under Article 3.70-3C, §3A(e), Article 20A.18B(e) and §21.2809(b), the actual amount of the payment on the clean claim is determined based on the coverage provided in the health insurance policy or health care plan and any additional payment due a physician or provider or any refund due the preferred provider carrier or HMO is to be made not later than the 30th day after the later of e date that the physician or provider receives notice of audit results or, if an appeal was filed before expiration of the 30-day refund period, any appeal rights of the insured or enrollee are exhausted.

With regard to the comment that the rule in §21.2809 which requires the insurer to pay 85% of the clean claim whether the insurer is liable or not under the health insurance policy "perhaps impairs" the contract between the insurance company and the insured, the department disagrees. Article I, §10 of the U.S. Constitution provides: "No state shall pass any. . .law impairing the obligation of contracts." Article I, §16 of the Texas Constitution provides: "No . . . law impairing the obligation of contracts, shall be made." Federal and state constitutional guarantees against impairment of contractual obligations are interpreted essentially identically. Chandler v. Jorge A. Gutierrez, P.C., 906 S.W.2d 195, 203 (Tex. App.–Austin 1995, writ denied). The interpretive commentary for Article I, §16 of the Texas Constitution states in part:

The guaranty of the Constitution is directed against the impairment of the obligation of contracts rather than the contract itself. A contract is an agreement in which a party undertakes to do or not to do a particular thing. Said party is required by duty and by law to perform his undertaking and this is known as the obligation of the contract. Any law which releases a part of this obligation, any act which to any extent or degree amounts to a material change or modifies it, must impair it. . . .The obligation protected is not derived from the acts and stipulations of the parties alone, but includes also the relevant law in force at the time the contract is made. The contract clause forbids only laws which operate retroactively on contracts. (Vernon's Ann. Tex. Const., Art. I, §16)

The constitutional prohibitions against impairment of contracts "is directed against the impairment of the obligation of contracts rather than the contract itself, that is, what the party to a contract is required by duty and by law to perform. Any law which releases a part of this obligation, any act which to any extent or degree amounts to a material change or modifies it, must impair it." Cardenas v. State, 683 S.W.2d 128, 131 (Tex. App.–San Antonio 1984, no writ). For the reasons outlined in this response, it is the department's position that neither House Bill 610 nor the rules relieve a preferred provider carrier of any obligation under the insurance contract between the insurance company and the insured nor do they materially change or modify that contract nor operate retroactively on that contract; neither House Bill 610 nor the rules relieve an HMO of any obligation under the health care plan nor do they materially change or modify the plan nor do they operate retroactively on that plan. The obligation of the insurance company or HMO to pay physician/provider claims in accordance with the insurance contract or health care plan is not changed by House Bill 610 or these rules.

The department disagrees that an insurer or TPA owes a fiduciary duty to its insured. The Texas courts have held that there is no general fiduciary duty between an insurer and its insured. Garrison Contractors, Inc. v. Liberty Mutual Insurance Co., 927 S.W.2d 296, 301 (Tex. App.–El Paso 1996), aff'd 966 S.W.2d 482 (Tex. 1998) According to the courts, fiduciary relationships arise from formal, technical relationships such as attorney/client, or from informal, social, moral, or personal relationships of confidence and trust which impose greater duty as a matter of law. Garrison at 301 citing Lovell v. Western National Life Insurance Co., 754 S.W.2d 298, 303 (Tex. App.–Amarillo 1988 (writ denied)).

Comment: Two commenters stated that the rules provide incentives for both subscribers and providers to delay sending information. One commenter stated that not only do the rules seem to provide an incentive for both subscribers and providers to delay sending information, payors may never receive requested information under the proposed rules. Payors have no control over the speed with which they are provided information by others. The proposed rules seem to guarantee that providers will never send requested information as they will receive 85% payment if they "stonewall." Another commenter stated that if a provider suspects that services may not be covered, the provider is faced with the tempting position of withholding records and receiving 85% of the contracted rate or providing the records and risk having the claim denied. The commenter stated that often medical records must be requested from several providers, and providers other than the billing providers do not necessarily have an incentive to respond quickly to a request for medical records. In addition, providers may demand advance payment for medical records, and it sometimes takes longer than 45 days just to receive requested records. If the carrier never receives requested medical records, the carrier will likely pay for many claims where liability does not exist under the insurance contract. If claims expenses increase, premiums will likely increase, and this will impact the whole industry.

Response: The department disagrees that the rule provides incentives for subscribers (i.e., insureds and enrollees) and physicians or providers to delay sending information to preferred provider carriers or HMOs. The rules are consistent with the provisions of House Bill 610. As to contracted physicians or providers, the department does not anticipate that these physicians or providers will delay or fail to provide any additional information available from them as these physicians or providers want 100% of the contracted rate, and not just 85%, as the

contracted rate is less than the physician's or provider's usual charge for the service rendered. In addition, in most instances, the submitted claim will contain all of the necessary information required to process the claim (i.e., the information required pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules) and thus the statutory claims payment period will commence upon receipt of the claim. The department also believes that preferred provider carriers or HMOs and physicians or providers could agree by contract to the length of time in which the physician or provider must supply any additional information/attachment within their possession that is not already defined as an element or attachment of a clean claim. The department recognizes that preferred provider carriers and HMOs may need information from non-contracted physicians or providers, the insured/enrollee, or other sources. As to non-contracted physicians or providers, there are laws that address the timeliness for physicians or providers to respond to requests for medical information necessary in the collection of fees for medical services provided by the physician or provider (including Occupations Code, Title 3, Chapter 159 (Physician-Patient Communication); Health and Safety Code, Title 4, Chapter 241 (Hospitals); and Health and Safety Code, Title 4, Chapter 311 (Powers and Duties of Hospitals). While the department is not aware of any law that requires insureds/enrollees or other sources to provide requested information within a certain time period, it is anticipated that most insureds/enrollees will provide the information as they want their physician or provider to be paid since they are still seeking care or could in the future seek care from the physician or provider. As to other sources, the department has no authority to adopt a rule requiring response within a certain time frame, but anticipates that most sources will respond as promptly as circumstances will allow and as a matter of good business practice. Neither the statute nor the rules require the payment of claims where liability does not exist under the insurance contract or the health care plan; both the statute and the rules require an interim payment of 85% of the contracted rate on a clean claim that the preferred provider carrier or HMO intends to audit and provide for a refund of any overpayment. Based upon input from the industry, the department believes that only a small percentage of clean claims will not be able to be processed within the 45-day statutory claims period and will thus be subject to the interim payment of 85% of the contracted rate on the clean claim. For example, one HMO stated at the January 25, 2000 rule hearing, that it currently has approximately 2,000, or less than 1%, of its HMO claims that require 45 days or more for processing. If, however, the implementation of House Bill 610 results in increases in claims expenses and premiums, it is within the purview of the legislature to determine if a revision is required in the prompt payment law.

Comment: A commenter stated that the requirement in the proposed rule that an insurer pay 85% of the claim whether it is liable or not in some instances is an unconstitutional "taking" that is prohibited by the U.S. Constitution and the Texas State Constitution. The commenter stated that it is a prohibited taking of one person's property and giving it to another. The commenter cited Marrs v. Railroad Commission (172 S.W.2d 491, 494 (Tex. 1944)) which cites the U.S. Supreme Court decision in Thompson v. Consolidated Gas Co. (300 U.S. 55, 80, 57 S. Ct. 364, 376, 81 L. Ed. 510, 524 (1937)). According to the commenter, the question of constitutionality can be avoided by use of the broad discretion vested in the department in Article 3.70-3C, §3A(a) to define the term "clean claim." The commenter stated that the law clearly requires that a statute be construed to be constitutional and that it is presumed that compliance with the constitution is intended and that a just and reasonable result is intended. The commenter recommended revising the definition of "clean claim" in proposed §21.2802(3) to be a claim "for which coverage and liability under the health insurance policy have become reasonably clear. . . ." and deleting §21.2809(a) and renumbering §21.2809(b) and (c). The commenter stated that the language "for which liability. . . have become reasonably clear" is taken from Article 21.21-2, §2(b)(4), the Unfair Claims Settlement Practices Act, which provides severe penalties for committing an unfair claims settlement practice. The commenter stated that under the Unfair Claim Settlement Practices Act the Commissioner has broad authority to hold companies accountable when they do not process their claims in a timely manner.

Response: The department disagrees that the requirement in the proposed rule that an HMO or preferred provider carrier pay 85% of the clean claim whether it is liable or not in some instances is an unconstitutional "taking" that is prohibited by the U.S. Constitution and the Texas State Constitution. The rule is consistent with Article 3.70-3C, §3A(e) and Article 20A.18B(e) of the Insurance Code as enacted by House Bill 610. The facts of Marrs v Railroad Commission, 177 S.W.2d 941, 948 (Tex. 1944), the case cited by the commenter to support their position, concerned proration orders issued by the Railroad Commission (RRC) apportioning the allowable production of oil from a single pool. The operation under the RRC orders resulted in the drainage from petitioners' leases to adjoining leases in the pool from which larger proportion of oil had previously been recovered. The potential of petitioners' leases was several times that of the adjoining area. The petitioners owned practically all the mineral estate in the southern section of the McElroy Field known as the Inside McElroy area. A suit was brought to set aside the RRC orders as invalid because they were unreasonable, arbitrary, and discriminatory, and amounted to the confiscation of private property. The petitioners' suit was predicated on the theory that their production was so restricted by the RRC's proration orders that they were unable to recover their oil before it drained away to the more densely drilled section to the north, known as the Church-Fields area. In the Texas Supreme Court's analysis, the court cited the findings of the trial court:

Under the findings of the trial court the allowables as fixed by the Railroad Commission for the two areas are entirely out of proportion to the potentials thereof. They are not in proportion to the oil under the different areas. It is very evident that petitioners are not being permitted to mine their just proportion of the oil. There is several times as much oil underlying petitioners' land as there is under the land in the Church-Fields area, yet those in the Church-Fields area are being permitted to mine nearly as much oil as are petitioners. As the oil is taken from the depleted Church-Fields area it is replaced by oil drained from petitioners' property. If petitioners were free to fend for themselves they could mine the oil under their land and thus prevent its escape to the adjoining area. But the orders of the Railroad Commission here complained of prevent petitioners from so doing. As a result, petitioners are being forever deprived of their property. It is the taking of one man's property and the giving it to another. (emphasis added) (Marrs at 948)

The Texas Supreme Court affirmed the trial court's judgment (and reversed the judgment of the Court of Civil Appeals)

holding the RRC proration orders invalid and permanently enjoining the RRC from enforcing the proration orders allocating and apportioning the allowable production of oil from the field in question between the producers therein for the months of March, April, May, and June 1941. In the opinion, the court stated:

This is not a case of mere waste to which the Commission has exercised the sound discretion invested in it to conserve our natural resources. As previously stated, the orders of the Railroad Commission have the effect of taking one's property and giving it to another under circumstances where the evidence shows that this is not necessary in order to conserve the natural resources. In Thompson v. Consolidated Gas Co. (citations omitted), it was said 'And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid.' (Marrs at 949)

The department believes that the facts of Marrs are sufficiently different from the facts at hand that it does not follow that the requirement in Article 3.70-3C, §3A(e), Article 20A.18B(e), §21.2807 and §21.2809(a) that an insurer pay 85% of the claim whether it is liable or not in some instances is an unconstitutional taking that is prohibited by the U.S. Constitution and the Texas State Constitution. The department's position is based on the following analysis. (i) Unlike Marrs, the money that is to be paid by the preferred provider carriers and HMOs to the physicians and providers pursuant to the 85% requirement is not clearly the property of the preferred provider carriers or HMOs; it is money that is in dispute. After a clean claim is filed with the insured's preferred provider carrier or the enrollee's HMO, the amount owed on the claim is arguably an amount that is in dispute; it may belong to the physicians and providers who have rendered services, treatment, or supplies to the insureds/enrollees based on some evidence or action that has informed the physician or provider that the insured/enrollee is covered by that preferred provider carrier or HMO (i.e., health insurance card/health care plan card or contact with the preferred provider carrier or HMO via phone, fax, e-mail, or other contact), or it may continue to be held by the preferred provider carrier or HMO for payment on future claims if the services, treatment, or supplies are not covered. The preferred provider carrier and the HMO have agreed by contract to pay these physicians and providers upon the rendering of services, treatments, and supplies to insureds/enrollees. The premiums collected from insureds by the preferred provider carrier and from the enrollees by the HMO are held by the preferred provider carrier or HMO for the payment of claims incurred by its insureds/enrollees. The interim payment is a temporary shifting of monies to the insureds'/enrollees' physicians and providers while the preferred provider carrier or the HMO determines the actual amount owed under the policy or plan for the services, treatments, and/or supplies that have already been provided to the insured/enrollee. It is the department's interpretation that during the period in which the preferred provider carrier or HMO is investigating or reviewing the claim, collecting additional information, or taking other action to make a final determination of the amount owed on the claim (i.e., auditing) the intent of the statute is to partially shift the economic burden to preferred provider carriers and HMOs in lieu of the current situation in which the economic burden is borne solely by physicians and providers who have rendered services, treatments, and/or supplies to insureds of the preferred provider carrier or to enrollees of the HMO. In outlining the purpose of House Bill 610 to the House Insurance Committee at its March 30, 1999 hearing on the bill, Representative Kyle Janek of Houston, sponsor of the bill, stated:

Many times patients will be on the hook for a particular payment. The doctor may say, I can't get your folks to pay, I'm not going to continue to treat you if I'm not getting paid. The hospital may say the same thing. So, you know, I'm trying to get the patients taken out of the loop on this as well, get them out of the middle of the fire fight. We have some smaller operations, smaller physician's offices or groups, or smaller hospitals, particularly in the rural areas, that operate on narrow cash flows. And we see oftentimes when insurance companies, HMOs, PPOs, will drag out the payment process. And in doing so, they are able to sit on large sums of money for a longer period of time while they earn the interest on that. (Hearing on House Bill 610 before the House Committee on Insurance, 76th Leg., R.S., Tape 1A (March 30, 1999))

The statute is based on the concept that once a physician or provider has submitted a "clean claim" and thereby provided the information required of that physician or provider, pursuant to Article 3.70-3C, §3A and Article 20A.18B of the Insurance Code and department rules, on the service, treatment, and/or supplies provided to the insured/enrollee of the preferred provider carrier or HMO, the preferred provider carrier or HMO must pay an interim payment of 85% of the contracted rate on the clean claim to that physician or provider if the preferred provider carrier or HMO intends to audit the clean claim and cannot complete the audit within 45 days; the physician or provider is no longer required to wait to receive any payment for the services, treatments, and/or supplies that he/she has provided until the preferred provider carrier or HMO has fully resolved all of the issues related to the payment of the clean claim (e.g., pre-existing conditions, coverage limitations or exclusions, operative reports, medical records from other providers, medical necessity, experimental or cosmetic procedures, police reports, etc.). (ii) Unlike Marrs, the payment of the money is temporary if the preferred provider carrier or HMO determines after the completion of the audit that the payment of 85% of the contracted rate on the clean claim is overpayment; it only becomes a permanent payment if the preferred provider carrier or HMO determines after the completion of the audit that the clean claim is a covered claim. In Marrs, the trial court findings cited by the Texas Supreme Court stated that the petitioners were "being forever deprived of their property." (emphasis added) (Marrs at 948). The interim payment of 85% is not the end of the clean claims process but is rather an interim shifting of the economic burden from the physician or provider to the preferred provider carrier or HMO until the final determination of the actual amount owed on the clean claim. Upon this final determination, if the HMO or preferred provider carrier has overpaid the physician or provider, §21.2809(b) in accordance with Article 3.70-3C, §3A(e) and Article 20A.18B(e) provide for the refund of any overpayment due to the preferred provider carrier or HMO. There is a difference between an 85% payment which is a final payment with no refund in the event of overpayment and an interim 85% payment with the requirement of a refund in the event of overpayment. (iii) Unlike Marrs, the payment is not required unless the preferred provider carrier or HMO cannot complete the audit within 45 days; in Marrs, the petitioners could do nothing under the RRC proration orders to recover their oil before it drained away to the more densely drilled section to the north.

With regard to the commenter's recommended revisions to define "clean claim" in proposed §21.2802(3) to be a claim "for which coverage and liability under the health insurance policy have become reasonably clear. . . ." based on the language in Article 21.21-2, §2(b)(4) and to delete §21.2809(a), the department does not believe that these revisions would properly implement Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) of the Insurance Code. The rule is consistent with Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) as enacted by House Bill 610. The broad authority vested in the department in Article 3.70-3C, §3A(a) and Article 20A.18B(a) to define "clean claim" does not give the department the authority to promulgate a definition that is not supported by the language of the statute. To define "clean claim" to be a claim "for which coverage and liability under the health insurance policy have become reasonably clear. . . ." is not supported by the language or legislative history of House Bill 610. Article 21.21-2 (Unfair Claim Settlement Practices Act) was first enacted in 1973 and was last amended in 1993. Article 21.21-2, §2(b)(4) provides that, "Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear" constitutes an unfair claim settlement practice that is prohibited by Article 21.21-2. Article 3.70-3C, §3A and Article 20A.18B, enacted by the 76th Legislature to be effective September 1, 1999, are the latest enactment of prompt payment laws for claims submitted by contracted physicians or providers for services or benefits provided to insureds of preferred provider carriers and enrollees of HMOs. To add the language "for which coverage and liability under the health insurance policy have become reasonably clear" to the definition of "clean claim," would, in effect, superimpose the requirements of Article 21.21-2, §2(b)(4) over the requirements of Article 3.70-3C, §3A and Article 20A.18B, would be inconsistent with the plain language of Article 3.70-3C, §3A and Article 20A.18B and would undermine the legislative intent of these statutes. It is the department's position that the legislature determined that the situation of delays in claims payments to contracted physicians or providers required a remedy, and that it enacted House Bill 610 as the remedy. Both the language and the legislative history of House Bill 610 indicate the intent to change the current method of processing claims. To make the determination of liability for the claim a "clean claim" element is simply a continuation of the status quo and not consistent with the intent of the legislature to change the law with regard to the current method of processing claims. In addition, to define "clean claim" to be a claim "for which coverage and liability under the health insurance policy have become reasonably clear" raises a question as to when the 85% requirement would be triggered. To provide that a claim is not clean until all the issues of coverage and liability have been resolved regardless of the amount of time needed by the preferred provider carrier or HMO to make such a determination would not only be a continuation of the status quo, but the 85% requirement in Article 3.70-3C, §3A(e) and Article 20A.18B(e) would have no meaning whatsoever. A cardinal rule of statutory construction is that effect is to be given to all the words of a statute and no statutory language will be treated as surplusage if possible. City of Amarillo v. Martin, 971 S.W.2d 426, 430 (Tex. 1998). The rules in §21.2807 and §21.2809(a) are consistent with Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) as enacted by House Bill 610. The requirement in Article 3.70-3C, §3A(e) and Article 20A.18(e) that the preferred provider carrier and HMO pay 85% of the contracted rate on a claim that the preferred provider carrier or HMO intends to audit is one of five possible actions that may be undertaken by a preferred provider carrier or HMO upon receipt of a clean claim. The five possible actions under Article 3.70-3C, §3A(c) and (e) and Article 20A.18B(c) and (e) are: Within 45 days of the date the clean claim is received, (i) pay the total amount of the claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier (i.e., a covered claim); (ii) deny the claim in its entirety (i.e., not a covered claim); (iii) pay the portion of the claim that is not in dispute (i.e., a covered claim) and deny the remainder of the claim (i.e., not a covered claim); (iv) pay the portion of the claim that is not in dispute (i.e., a covered claim) and audit the remainder of the claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate on the portion of the claim that is being audited (i.e., coverage of the claim not yet determined); or (v) audit the entire claim and if the audit cannot be completed within the 45 days, pay the physician or provider 85% of the contracted rate (i.e., coverage of the claim not yet determined). Under the statute, these five actions are the only actions available to the preferred provider carrier and HMO upon receipt of a clean claim. Thus, under the statute, if a preferred provider carrier or HMO does not pay the total amount of the clean claim in accordance with the contract, deny the clean claim in its entirety; or pay a portion of the clean claim that is not in dispute and notify the provider why the remainder of the claim is denied, the only other option available to the preferred provider carrier or HMO under the statute is to "audit" the clean claim or a portion of the claim if the preferred provider carrier or HMO is unable to determine within the statutory claims payment period whether it is liable for the clean claim or a portion of the claim.

Comment: Two commenters stated that developing and maintaining the process in proposed §21.2807 that requires an HMO or preferred provider carrier that intends to audit a claim to initially pay 85% of the contracted rate on the claim within the statutory claims payment period will be administratively cumbersome and costly. One commenter estimated that it will cost over $1 million to modify its systems for manual adjudication and interim payment of claims pended for investigation. The cost for auto adjudication is expected to be higher. The commenter also stated that the initial annual staffing costs to create a new department for tracking and recovering payments to Texas providers for subsequently denied claims is estimated at $300,000.

Response: The department acknowledges that developing and maintaining the process may increase administrative costs and processes. These requirements, however, are a result of the legislative enactment of House Bill 610 and not as a result of the adoption of these rules.

Comment: One commenter stated there is a concern about where to send the 85% payment because currently some of the checks sent to providers are being returned because the provider has changed addresses and the carrier is unable to locate the provider.

Response: An HMO or preferred provider carrier should send the payment to the last known address of the physician or provider. It is the physician's or provider's responsibility to keep the HMO or preferred provider carrier informed of any change in address.

Comment: A commenter objected to the wording in §21.2807(b)(1) to "pay the total amount of the clean claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier" and recommended that the requirement be changed "to pay the benefits payable for covered expenses," which may not be the same as the total amount because of deductibles, coinsurance, non-covered expenses, etc. The commenter also pointed out that it pays claims in accordance with the contract it has with the insured, subject to any discount in its contract with the PPO network. The commenter states that it does not have a contract directly with the provider.

Response: The department disagrees that a change is needed. First, the language in §21.2807(b)(1) "pay the total amount of the clean claim in accordance with the contract between the physician or provider and the HMO or preferred provider carriers. . ." tracks the language contained in both Article 20A.18B(c)(1) and Article 3.70-3C, §3A(c)(1) as enacted by House Bill 610. Secondly, the language "in accordance with the contract between the physician or provider and the HMO or preferred provider carrier" means the same as "benefits payable for covered expenses," i.e., that the amount paid will not include deductibles, coinsurance, and non-covered expenses. The department recognizes that the language "pay the total amount of the claim" may appear to imply that payment would have to be made for the "amount billed" which would not be based on the "contracted rate"; however, the modifying language "in accordance with the contract between the preferred provider and the insurer" has the same effect as stating "based on the contracted rate."

Comment: Two commenters recommended that §21.2807(c)(1), relating to a clean claim for a prescription benefit that is electronically adjudicated and electronically paid, be clarified to state that this rule only applies to a completely paperless and "non-mailed," except for e-mail, system in which payment is made by electronic funds transfer to the provider's account.

Response: The department agrees, and §21.2802(25)(C) and §21.2807(c) have been changed accordingly.

Comment: One commenter requested that language be added in §21.2809(a) to define how the carrier would designate a partial payment of a claim in audit on the Explanation of Benefits. Otherwise, it will be difficult for providers to distinguish these payments from full payments until they are able to audit the payment against their contract.

Response: The department disagrees. This is an internal decision for HMOs and preferred provider carriers and may be addressed in the contract between the physician or provider and the HMO or the preferred provider carrier.

Comment: A commenter stated that the provision in proposed §21.2809(a) that claims not paid by the payor within 45 days be paid at 85% of charges should be changed to require late payment at 100% of charges. There is no reason to discount charges for the payor's errors.

Response: The department disagrees. The 85% payment is required by Article 3.70-3C, §3A(e) and Article 20A.18B(e) of the Insurance Code. The department does not have the authority to change this requirement by rule.

Comment: One commenter recommended that the following requirement be added to §21.2809(a): "The HMO or preferred provider carrier will have 30 days from the date of notice to the physician or provider to complete the audit and make a final determination as to the liability of the claim."

Response: The department disagrees. The statute is silent on this matter. Article 3.70-3C, §3A(e) and Article 20A.18B(e) of the Insurance Code require the payment of 85% of the contracted rate on the clean claim if the preferred provider carrier or HMO intends to audit the clean claim and cannot complete the audit within 45 days. Article 3.70-3C, §3A(n) and Article 20A.18B(o) authorize the commissioner to adopt rules as necessary to implement the sections. The department does not believe that the recommended revision is necessary to implement Article 3.70-3C, §3A and Article 20A.18B. HMOs and preferred provider carriers have an interest in auditing claims as quickly as possible because they will have paid 85% of the contracted rate on the clean claim to the physician or provider, and the sooner they determine the actual claims payment the sooner they will receive any refund in the event of overpayment.

Comment: Nineteen commenters recommended changes to proposed §21.2809(b) relating to provider refunds in the event of overpayment. Four commenters raised concerns about the payor's ability to collect refunds from a provider in the event the claim should not have been paid. The commenters voiced concern that the department does not have any power or any mechanism to force any provider to refund any amounts to an insurer, and therefore any such provision as to a refund has no meaning whatsoever.

Response: Article 3.70-3C, §3A(e) and Article 20A.18B(e) as enacted by House Bill 610 specifically provide for any refund due a preferred provider carrier or HMO in the event of any overpayment to a physician or provider, and the rules are consistent with the statute. The department recognizes the commenters' concerns and agrees that the statute does not provide the department the power to require a physician or provider to refund any amounts to an HMO or preferred provider carrier. However, to assist HMOs and preferred provider carriers in receiving refunds, §21.2809(b) authorizes chargebacks as one possible method of refund.

Comment: One commenter stated that the ongoing cost of collecting refunds from providers is expected to be significant. Although allowed under the rules, the commenter's operations systems cannot offset refunds from future owed amounts. If providers refuse to refund payments, the only recourse is litigation or arbitration and these costs are expected to be considerable. Another commenter recommended that §21.2809(b) be revised to eliminate the carrier's ability to obtain a refund by chargeback because chargebacks create an "accounting nightmare" and make it impossible for a provider to reconcile and balance the patients' accounts especially for providers with multiple hospitals within their systems. According to the commenter, in many contracts the parties agree that no chargeback will be allowed, and thus, allowing a chargeback may be contrary to the contract between the provider and the carrier.

Response: At the January 25, 2000 hearing on the proposed rules, physicians and providers indicated that they currently refund any overpayments, and the department expects them to continue to do so. However, if this does not occur, the costs associated with collecting refunds are the result of the legislative enactment of House Bill 610 and are not the result of the adoption and implementation of these rules.

The department disagrees with the recommended revision to eliminate chargebacks because in some instances chargebacks may be the most efficient means of handling an overpayment. The rule as proposed did not require that a chargeback be used but rather allowed chargebacks as only one method of refund. Section 21.2809(b), however, has been changed to clarify that other methods may be used and that parties may agree by contract to methods other than chargebacks. The adopted rule recognizes the various payment systems of the different types of physicians and providers and allows flexibility to both the physicians and providers and HMOs or preferred provider carriers to develop the most effective and efficient method of handling any overpayments.

Comment: Five commenters recommended revising §21.2809(b) to require that prior to making a chargeback or recoupment, the HMO or preferred provider carrier shall provide the physician or provider with an invoice enumerating the specific claims and amounts that were incorrectly paid. One commenter suggested that the rule provide that "Chargebacks should be in the form of a reversed Explanation of Benefits (EOB) with corrected EOB data on the same document." One commenter stated that it would be very useful if notification to the patient was also made at the time that the chargebacks were made to the physicians.

Response: The department believes that the proposed rule cannot be revised to incorporate the requested changes because such revisions could be considered substantive changes in the rule which would require republication of the rule with another 30-day comment period before the rule could be considered for adoption. HMOs and preferred provider carriers are encouraged to employ the process of enumerating the specific overpaid claims and amounts as a normal business practice.

Comment: Two commenters recommended that §21.2809(b) be revised to require the physician or provider to repay via check or alternate payment method as agreed to by contract. Two commenters recommended that the rule allow the refund to be made by chargeback, recoupment or other method contractually agreed upon. Five commenters recommended revising §21.2809(b) to allow the physician or provider an opportunity to reimburse the HMO or preferred provider carrier though an alternative arrangement and to provide that nothing in this provision shall override existing contractual arrangements that already allow alternative payment arrangements in the event of overpayment to the physician or provider. One commenter recommended that the rule allow chargebacks if contractually agreed upon. Another commenter recommended that if chargebacks are not prohibited altogether, §21.2809(b) should be revised to provide that, "unless otherwise agreed in the contract between the HMO or preferred provider carrier and the physician or provider, the refund may be made in the form of a chargeback against the physician or provider."

Response: The rule as proposed did not prohibit refund via check, recoupment, or alternate payment method as agreed to by contract and specifically authorized refund by any method, including chargeback. The rule has been clarified to recognize the various payment systems of the different types of physicians and providers and allows flexibility to both the physicians and providers and HMOs or preferred provider carriers to develop the most effective and efficient method of handling any overpayments. Nothing in the rule overrides the existing contractual arrangements that allow alternative payment arrangements in the event of overpayment to the physician or provider.

Comment: One commenter recommended providing that if the invoice is not paid within 30 days, the HMO or preferred provider carrier may recover the overpaid amount in the form of a chargeback against the physician or provider.

Response: The department disagrees. Article 3.70-3C, §3A(e) and Article 20A.18B(e) as enacted by House Bill 610 require any refund due the preferred provider carrier or HMO to be paid not later than the 30th day after the later of the date that the physician or provider receives notice of the audit results or any appeal rights of the insured/enrollee are exhausted. The method of refund suggested by the commenter is not consistent with the statute.

Comment: A commenter suggested strong rules be developed regarding refunds of prepayments.

Response: The department disagrees. The rule as adopted allows flexibility to the physicians and providers and HMOs or preferred provider carriers to develop the most effective and efficient method of handling any overpayments.

Comment: Four commenters stated that there is no reference in §21.2809(b) to the appeal rights of the provider even though most providers have the contractual right to appeal an audit and invoke arbitration if necessary. The commenters recommended that §21.2809(b) be revised to add "or the exhaustion of any physician's or provider's rights to appeal or arbitration" to provide another means for determining when the refund shall be made.

Response: Article 3.70-3C, §3A(e) and Article 20A.18B(e) as enacted by House Bill 610 require any refund due the preferred provider carrier or HMO to be paid not later than the 30th day after the later of the date that the physician or provider receives notice of the audit results or, if an appeal was filed before expiration of the 30-day refund period, any appeal rights of the insured/enrollee are exhausted. Article 3.70-3C, §3A(n) and Article 20A.18B(o) authorize the commissioner to adopt rules as necessary to implement the sections. The department does not believe that the recommended revision is necessary to implement Article 3.70-3C, §3A and Article 20A.18B.

§21.2808. Effect of Filing a Deficient Claim

Comment: Twelve commenters objected to the published version of proposed §21.2808 relating to the effect of filing a deficient claim. Three of these commenters recommended that §21.2808 be revised to require the payor to furnish the reasons why the claim is deficient. The reasons for the suggested change included: (i) notice that a claim is deficient without notice of how it is deficient is useless information to the provider and causes the provider to have to guess what is wrong with the claim. (ii) If the HMO or preferred provider carrier knows the claim is deficient then it obviously must know what is missing from the claim and could easily include this information in the notice. (iii) By not requiring the HMO or preferred provider carrier to specifically identify the deficiency, the department is setting the clean claims rules up for abuse because HMOs or preferred provider carriers can repeatedly reject a claim as deficient (even if it is truly clean) just to prevent the 45-day statutory claims payment period from ever beginning.

Response: The department recognizes the commenters' concerns. Many HMOs and preferred provider carriers, however, already provide this information to their physicians and providers, and the department encourages them to continue to do so. The department also encourages other HMOs and pre-

ferred provider carriers that do not currently provide reasons for the claim deficiency to implement this practice. The rule in §§21.2803-21.2806 contains requirements for identifying the elements and attachments and for providing notice if any elements or attachments are changed, and thus, physicians and providers will have the information necessary to determine the deficiencies. The department does not have any information to indicate that this will occur and will monitor HMOs and preferred provider carriers for the practice of repeatedly rejecting a truly clean claim as deficient just to prevent the 45-day statutory claims payment period from ever beginning.

Comment: Three commenters objected to the omission of a means of notification that a claim is deficient. One commenter noted that currently the method of notification can vary from claim to claim. One commenter requested that §21.2808 be revised to require the HMO and preferred provider carrier to give written notice to the provider. Two commenters recommended that the method of notification be by contract between the HMO or preferred provider carrier and the physician or provider. Another commenter recommended that the notice be "in writing or by another means mutually agreed upon through contractual obligations." One commenter recommended that §21.2808 be revised to require that the 15-day notice shall be sent separately by certified mail, return receipt requested, or by courier delivery with a signed receipt. This provision is needed to resolve any disputes that arise over whether an HMO or preferred provider carrier complied with the notice requirements and to prevent the required notice from being "buried" in other documents sent to the physician or provider.

Response: The department disagrees that these revisions are necessary. The purpose of the rule is to allow flexibility to the HMOs and preferred provider carriers to determine the most effective and efficient means of notification. This flexibility is necessary because what is the most effective and efficient means may vary from claim to claim. In some instances where the deficiencies are few and/or minor and the information can be readily obtained (i.e., birthdate, address, etc.), a phone call may be the best notification while in other instances with several deficiencies or where the information is not easily obtainable, a written notice may be the best means of notification. Section 21.2808 as adopted is changed to provide for a 45-calendar-day notice that a claim is deficient in lieu of the proposed 15-business-day notice.

Comment: Eight commenters objected to the requirement that the HMO or preferred provider carrier notify the physician or provider that the claim is deficient within 15 business days of the receipt of the claim. The reasons for the objection included: (i) The requirement is unnecessary, duplicative, and of no benefit to the physician or provider. (ii) The requirement appears to be in conflict with the provision that an HMO or preferred provider carrier has 45 days to adjudicate a claim and would thereby significantly reduce the 45 days that the statute authorizes as a period for review of clean claims. This requirement appears to be conflicting or would, at a minimum, require handling the claims twice. (iii) There is no such provision in the statute. (iv) The provision creates an undue burden on payors that significantly deviates from the provisions of House Bill 610. Because the rule essentially requires that every claim be fully processed in 15 days, this time consuming process would require a significant increase in claims and adjudication resources which would have a significant economic impact on the cost of claims processing and would potentially result in premium increases. This conflicts with the department's determination that this provision would only involve minor costs for notification. (v) The filed version of House Bill 610 had the 15-day requirement, but this was removed from the enrolled version when health plans expressed concern about the additional resources necessary to administer such a requirement. (vi) The 15-day requirement can result in claims being deficient and thereby requiring a new submission and new 45-day timeline when all that is lacking are medical records or progress notes. (vii) The requirement could potentially lead to an increase in provider fraud going undetected because of the short time frame for reviewing claims for the required data elements and required attachments. One commenter stated that the section does not make clear what happens if the payor fails to identify a deficiency within the 15-day period. The commenters' recommendations included: (i) Increase the time to 30 business days which would give payors much needed time to make a thorough examination of claims and could greatly reduce the number of deficient claims returned to providers. (ii) Strike the 15-day requirement from the rule.

Response: The commenters' concerns are recognized, and §21.2808 is revised to provide for a 45-calendar-day period for notice of deficient claim with a provision that a different time period not to exceed 45 calendar days may be agreed to by the parties. Section 21.2808 is also revised to provide that notice of a deficient claim must be provided within 21 calendar days for prescription drug claims filed electronically.

Comment: Ten commenters responding to the staff's recommendation at the January 25, 2000 rule hearing to change from 15 days to 45 days the time of notice for a deficient claim indicated that they did not support the change. Their reasons included: (i) The change to 45 days unduly delays the claims processing to as long as 90 days before a claim payment. (ii) Fifteen days is enough time to determine whether a claim is deficient. (iii) The longer it takes for the plan to determine that they are not going to pay for the services, the harder it is for providers to collect from the patient.

Response: The department has revised the rule to change from 15 days to 45 days the time of notice for a deficient claim as a result of comments. The department recognizes that it may be harder to collect from patients, but the department believes that the 45 days is in accordance with the statute. The rule includes a provision that a different time period not to exceed 45 days may be agreed to by the parties; therefore, a shorter period may be negotiated. Also, deficiencies in a claim that are unnecessary to the processing of the claim should not necessarily delay the claim processing because there is nothing in the rule that prohibits the payment of deficient claims.

§21.2810. Date of Claim Payment

Comment: One commenter requested that the department consider establishing an acceptable process which payors can use as proof of claims payment within the required payment period for claims paid through the U.S. Postal Service. This is necessary because §21.2810 clearly speaks to compliance with the statutory claims payment period from the perspective of the person submitting the claim.

Response: The department disagrees. HMOs and preferred provider carriers should develop their own procedures for proof of claims payment. The rule allows HMOs and preferred provider carriers the flexibility to develop the most effective and efficient process.

Comment: Four commenters recommended changes to §21.2810(2) relating to the date of claim payment for electronic transmissions. One commenter recommended that §21.2810(2) be revised to "provide that if claim payment is made electronically, the claim is considered to have been paid on the first date following electronic transmission that the provider is able to verify that electronic payment has been received." The commenter stated that §21.2810(2), relating to date of claim payment for electronic transmissions, does not consider potential problems, such as the file not being readable or being corrupted. If this happens, the provider will not have received payment and may not receive payment for many days yet the HMO/preferred provider carrier has technically "paid" the payment. Dishonest HMOs/preferred provider carriers could use this mechanism to avoid the 45-day statutory claims payment period by intentionally corrupting the file. Four commenters recommended that §21.2810(2) be revised to provide that for claims paid electronically, the date of payment should be the date the electronic transmission is received by the provider or physician.

Response: The department disagrees that any of the recommended revisions are necessary. The department currently has no information to indicate that this potential problem will actually materialize. The department, however, will monitor complaint trends and take appropriate action if necessary.

§21.2811. Disclosure of Processing Procedures

Comment: One commenter stated that where a carrier has contracted with a preferred provider organization (PPO) rather than individual preferred providers, the carrier may have great difficulty in complying fully with the disclosure of processing procedures in §21.2811, and the proposed rules provide an inadequate methodology by which such carriers may themselves require or revise claims processing procedures.

Response: The department disagrees that any additional rules or methodology are needed to address those situations in which a preferred provider carrier contracts with a PPO rather than with individual preferred physicians or providers. Article 3.70-3C, §3A(m) and Article 20A.18B(n) of the Insurance Code, as enacted in House Bill 610, respectively, apply the prompt payment law, to a person with whom an insurer contracts to process claims or to obtain the services of preferred providers to provide medical care or health care to insureds under a health insurance policy and to a person with whom an HMO contracts to process claims or to obtain the services of physicians and providers to provide health care services to health care plan enrollees. Article 3.70-3C, §3(l), 28 TAC §3.3703(c) and Article 20A.18C(a)(5) also address the commenter's concerns. Article 3.70-3C, §3(l) provides that (i) an insurer may enter into an agreement with a PPO for the purposes of offering a network of preferred providers in which the agreement may provide that the notice and other insurer contracting requirements may be complied with by either the insurer or the PPO on the insurer's behalf; (ii) if an insurer enters into an agreement with a PPO, it is the insurer's responsibility to meet the requirements of Article 3.70-3C or to assure that the requirements are met; and (iii) all preferred provider insurance benefit plans offered in this state shall comply with the requirements of Article 3.70-3C. Section 3.3703(c) provides that an insurer may enter into an agreement with a PPO for the purpose of offering a network of preferred providers, provided that it remains the insurer's responsibility to meet the requirements of Article 3.70-3C and 28 TAC Chapter 3, Subchapter X (Preferred Provider Plans) or ensure that the requirements of Article 3.70-3C and 28 TAC Chapter 3, Subchapter X are met. Article 20A.18C(a)(5) requires an HMO that enters into a delegation agreement with a delegated network to execute a written agreement that contains a provision requiring the delegated network to comply with all statutory and regulatory requirements relating to any function, duty, responsibility, or delegation assumed by or carried out by the delegated network.

Comment: One commenter recommended that §21.2811(b) be revised to require that the notice be sent separately by certified mail, return receipt requested, or by courier delivery with a signed receipt. This provision is needed to resolve any disputes that arise over whether a carrier complied with the notice requirements and to prevent the required notice from being "buried" in other documents sent to the provider.

Response: The department disagrees that the method of delivery should be prescribed by rule. The rule allows HMOs and preferred provider carriers to develop the most effective and efficient method of delivery. The department currently does not have any information to indicate that the potential problem will actually materialize but will monitor complaint trends and take appropriate action if necessary.

Comment: A commenter recommended that the rules require that the physical address of the claims processing entity be provided to the physician or provider. This is necessary for delivery of certified mail or courier-delivered mail.

Response: The department agrees and §21.2811 as adopted includes this requirement.

§21.2815. Failure to Meet the Statutory Claims Payment Period

Comment: One commenter stated that proposed §21.2815 is problematic because carriers should not be required to pay a claim as required by §21.2815 if the claim is determined to not be a payable claim under the insured's policy.

Response: Section 21.2815 does not require that a claim be paid if the clean claim is not covered by the health insurance policy or health care plan. The penalty requirements in §21.2815 for failure to comply with the requirements of §21.2807(b) and §21.2809(a) and (c) are specifically provided for in Article 3.70-3C, §3A(f) and Article 20A.18B(f) of the Insurance Code, as enacted by House Bill 610, which provide that an insurer or HMO that violates subsection (c) or (e) of Article 3.70-3C, §3A or Article 20A.18B is liable to the physician or provider for the full amount of billed charges submitted on the claim or the amount payable under the contracted penalty rate, less any amount previously paid or any charge for a service that is not covered by the health insurance policy or by the health care plan. There is a specific provision in both the statute and §21.2815 that no payment is required for services not covered by the health insurance policy or the health care plan.

Comment: One commenter recommended that §21.2815 be revised to "provide that if full billed charges are less than the 'case rate' set forth in the contract between the provider or physician and the HMO or preferred provider carrier, the HMO or preferred provider carrier must pay the case rate." This is necessary because many specialty contracts do not have a contracted penalty rate but provide for a "case rate" payment that is actually a higher dollar amount than the full billed charges, and thus, if the provider submits a claim for the "case rate" payment and the carrier violates the claims payment period and is required to pay full billed charges, the carrier would

actually be receiving a windfall rather than paying a penalty. Unscrupulous HMOs/preferred provider carriers might violate the statutory claims payment period in order to profit from the penalty provisions.

Response: The department disagrees that a revision is needed to §21.2815 but agrees that as a result of the comment the definition of "billed charges" in proposed §21.2802(2) should be revised and that a definition for "case rate" should be added to the rule. The rule is revised to add the following sentence to the definition of "billed charges": "In the event of a case rate agreed to between the physician or provider and the HMO or preferred provider carrier, billed charges shall be considered the higher of the case rate or billed charges." This change is in addition to the change discussed in the response to comments to proposed §21.2802(2) on "billed charges." In addition, the rule contains the following definition of "case rate" in §21.2802(3): "A method of compensation in which a physician or provider receives one negotiated payment for all care rendered for a particular procedure or a specific diagnosis." The department believes that these two changes address the commenter's concerns about §21.2815.

Comment: In response to the staff recommendation at the January 25, 2000 rule hearing to add a sentence to the definition of "billed charges" as a result of the comment that §21.2815 should be revised to take into account "case rate" payments, one commenter requested that the staff recommended addition to the definition be clarified so that there is no misinterpretation that billed charges could be "case rate." Another commenter stated at the January 25, 2000 hearing that they also did not agree with staff's recommended addition to the definition of "billed charges" because it would create a problem with their billing systems since providers do not bill based on case rates, but rather bill based on total charges. The commenter stated that submitting a case charge in lieu of billed charges would require a total redoing of its billing system.

Response: The department agrees in part and disagrees in part. The definition of billed charges in §21.2802(2) as adopted indicates that in instances of a case rate, billed charges are considered to be the higher of the case rate or the billed charges. This preserves the penalty aspect of House Bill 610 when a case rate is involved. The department disagrees that any revision is necessary to address the commenter's concern that a physician's or provider's billing system would have to be revised to account for a case rate billing. The recognition of the existence of a case rate would be left to the physicians and providers and HMOs and preferred provider carriers during the claims process and would not require a change in the method by which a physician or provider bills the claim, unless otherwise specified in the contract between the physician or provider and the HMO or preferred provider carrier.

The new sections are adopted under the Insurance Code Article 3.70-3C, §3(m), §3A(a), §3A(n), and §9; and Articles 20A.09(j), 20A.18B(a), 20A.18B(o), and 20A.22; and §36.001. Article 3.70-3C, §3(m) specifies that a preferred provider contract must provide for prompt payment to a physician or provider for covered services rendered not later than the 45th day after the date a claim for payment is received "with the documentation reasonably necessary to process the claim." Article 3.70-3C, §9 authorizes the Commissioner to adopt rules as necessary to implement the provisions of Article 3.70-3C regulating preferred provider benefit plans. Article 20A.09(j) specifies that HMOs shall make prompt payment to a physician or provider for covered services rendered not later than the 45th day after the date a claim for payment is received "with documentation reasonably necessary for the HMO to process the claim." Article 20A.22(a) authorizes the Commissioner to promulgate reasonable rules as are necessary and proper to carry out the provisions of the Health Maintenance Organization Act. The 76th Texas Legislature passed House Bill 610 (Acts 1999, 76th Leg., ch. 1343, p. 4556, eff. Sept. 1, 1999) which enacted new Article 3.70-3C, §3A(a), effective September 1, 1999, to provide that a "clean claim" means a completed claim, as determined under department rules, submitted by a preferred provider for medical care or health care services under a health insurance policy. New Article 3.70-3C, §3A(n) enacted pursuant to House Bill 610 authorizes the Commissioner to adopt rules as necessary to implement §3A of Article 3.70-3C. House Bill 610 also enacted new Article 20A.18B(a), effective September 1, 1999, to provide that a "clean claim" means a completed claim, as determined under department rules, submitted by a physician or provider for medical care or health care services under a health care plan. New Article 20A.18B(o) also enacted pursuant to House Bill 610 authorizes the Commissioner to adopt rules as necessary to implement Article 20A.18B. Section 36.001(a) provides that the Commissioner of Insurance may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

§21.2802. Definitions.

The following words and terms when used in this subchapter shall have the following meanings:

(1) Audit – An instance in which an HMO acknowledges coverage of an enrollee under the health care plan or a preferred provider carrier acknowledges coverage of an insured under the health insurance policy but exceeds the statutory claims payment period while processing a clean claim or a portion of a clean claim.

(2) Billed charges – The charges made by a physician or provider who renders or furnishes services, treatments, or supplies provided the charge is not in excess of the general level of charges made by other physicians or providers who render or furnish the same or similar services, treatments, or supplies to persons in the same geographical area and whose illness or injury is comparable in nature or severity. In the event of a case rate agreed to between the physician or provider and the HMO or preferred provider carrier, billed charges shall be considered the higher of the case rate or billed charges.

(3) Case rate – A method of compensation in which a physician or provider receives one negotiated payment for all care rendered for a particular procedure or a specific diagnosis.

(4) Clean claim – A claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy with documentation reasonably necessary for the HMO or preferred provider carrier to process the claim, which contains:

(A) the required data elements set forth in §21.2803(b) of this title (relating to Elements of a Clean Claim);

(B) the attachments of which the physician or provider has been properly notified as necessary for processing pursuant to §§21.2803(c) of this title (relating to Elements of a Clean Claim) and 21.2804 of this title (relating to Disclosure of Necessary Attachments);

(C) any additional elements of which the physician or provider has been properly notified pursuant to §§21.2803(d) of this title (relating to Elements of a Clean Claim) and 21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements);

(D) the amount paid by the primary plan or other valid coverage pursuant to §21.2803(e) of this title (relating to Elements of a Clean Claim), if applicable; and

(E) any revised data elements, attachments, and additional clean claim elements of which the physician or provider has been properly notified pursuant to §21.2806 of this title (relating to Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements).

(5) Condition code – The code utilized by HCFA to identify conditions that may affect processing of the claim.

(6) Contracted rate – Fee or reimbursement amount for a physician's or provider's services, treatments, or supplies as established by agreement between the physician or provider and the HMO or preferred provider carrier.

(7) Deficient claim – A submitted claim that does not contain the required clean claim elements pursuant to §21.2803(a) of this title.

(8) Delegated claims processor – A licensed third party administrator to which an HMO or preferred provider carrier has delegated claims processing functions.

(9) Diagnosis code – The ICD-9-CM code number. Narrative diagnoses for non-physician specialties shall be submitted on an attachment.

(10) HCFA – The Health Care Financing Administration of the U.S. Department of Health and Human Services.

(11) HMO – A health maintenance organization as defined by Insurance Code Article 20A.02(n).

(12) HMO delivery network – As defined by Insurance Code Article 20A.02(w).

(13) Institutional provider – An institution providing health care services, including but not limited to hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers and residential treatment centers.

(14) Occurrence span code – The code utilized by HCFA to define a specific event relating to the billing period.

(15) Patient control number – A unique alphanumeric identifier assigned by the institutional provider to facilitate retrieval of individual financial records and posting of payment.

(16) Patient-status-at-discharge code – The code utilized by HCFA to indicate the patient's status at time of discharge or billing.

(17) Physician or provider –

(A) with regard to a preferred provider carrier, a preferred provider as defined by Insurance Code Article 3.70-3C, §1(10) (Preferred Provider Benefit Plans) or Article 3.70-3C, §1(1) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(B) with regard to an HMO,

(i) a physician, as defined by Insurance Code Article 20A.02(r), who is a member of that HMO's delivery network; or

(ii) a provider, as defined by Insurance Code Article 20A.02(t), who is a member of that HMO's delivery network.

(18) Place of service code – The codes utilized by HCFA that identify the place at which the service was rendered.

(19) Preferred provider carrier – An insurer that issues a preferred provider benefit plan as provided by Insurance Code Article 3.70-3C, Section 2 (Preferred Provider Benefit Plans).

(20) Primary plan – As defined in §3.3506 of this title (relating to Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates and Contracts).

(21) Procedure code – The HCFA Common Procedure Coding System (HCPCS) number, including CPT codes. In the absence of an existing HCPCS code or other commonly used code, this item may also apply to local codes developed specifically by Medicaid, Medicare, an HMO, or preferred provider carrier to describe a specific service or procedure.

(22) Revenue code – The code assigned by HCFA to each cost center for which a separate charge is billed.

(23) Secondary plan – As defined in §3.3506 of this title.

(24) Source of admission code – The code utilized by HCFA to indicate the source of an inpatient admission.

(25) Statutory claims payment period –

(A) the 45-calendar-day, or other time period not to exceed 45 calendar days set forth by written agreement between the physician or provider and the HMO or preferred provider carrier, in which claim payment or denial, in whole or in part, shall be made by an HMO or preferred provider carrier after receipt of a clean claim pursuant to Insurance Code Article 3.70-3C, §3(m) (Preferred Provider Benefit Plans), and Article 20A.09(j);

(B) the 45-calendar-day period in which claim payment or denial, in whole or in part, shall be made by an HMO or preferred provider carrier after receipt of a clean claim pursuant to Insurance Code Article 3.70-3C, §3A (Preferred Provider Benefit Plans) and Article 20A.18B; or

(C) the 21-calendar-day period in which claim payment or denial, in whole or in part, shall be made by an HMO or preferred provider carrier after receipt of an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to Insurance Code Article 3.70-3C, §3A(d) (Preferred Provider Benefit Plans) and Article 20A.18B(d), and §21.2814 of this title (relating to Electronic Adjudication of Prescription Benefits).

(26) Subscriber – If individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the HMO or preferred provider carrier; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan issued by the HMO or the preferred provider carrier.

(27) Type of bill code – The three-digit alphanumeric code utilized by HCFA to identify the type of facility, the type of care, and the sequence of the bill in a particular episode of care.

§21.2803. Elements of a Clean Claim.

(a) Required clean claim elements. A physician or provider submits a clean claim by providing the required data elements specified in subsection (b) of this section to an HMO or a preferred provider carrier, along with any attachments and additional elements,

or revisions to data elements, attachments and additional elements, of which the physician or provider has been properly notified as necessary pursuant to subsections (c) and (d) of this section, and §§21.2804 (relating to Disclosure of Necessary Attachments), 21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements), and 21.2806 (relating to Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements), and any coordination of benefits or non-duplication of benefits information pursuant to subsection (e) of this section, if applicable.

(b) Required data elements. HCFA has developed claim forms which provide much of the information needed to process claims. Two of these forms, HCFA-1500 and UB-82/HCFA, and their successor forms, have been identified by Insurance Code Article 21.52C as required for the submission of certain claims. The terms used in paragraphs (1), (2) and (3) of this subsection are based upon the terms used by HCFA on successor forms HCFA-1500 (12-90) and UB-92 HCFA-1450 claim forms. The parenthetical information following each term is a reference to the applicable HCFA claim form, and the field number to which that term corresponds on the HCFA claim form.

(1) Essential data elements for physicians or noninstitutional providers. Unless otherwise agreed by contract, the data elements described in this paragraph are necessary for claims filed by physicians and noninstitutional providers.

(A) subscriber's/patient's plan ID number (HCFA 1500, field 1a);

(B) patient's name (HCFA 1500, field 2);

(C) patient's date of birth and gender (HCFA 1500, field 3);

(D) subscriber's name (HCFA 1500, field 4);

(E) patient's address (street or P.O. Box, city, zip) (HCFA 1500, field 5);

(F) patient's relationship to subscriber (HCFA 1500, field 6);

(G) subscriber's address (street or P.O. Box, city, zip) (HCFA 1500, field 7);

(H) whether patient's condition is related to employment, auto accident, or other accident (HCFA 1500, field 10);

(I) subscriber's policy number (HCFA 1500, field 11);

(J) subscriber's birth date and gender (HCFA 1500, field 11a);

(K) HMO or preferred provider carrier name (HCFA 1500, field 11c);

(L) disclosure of any other health benefit plans (HCFA 1500, field 11d);

(i) if respond "yes", then

(I) data elements specified in paragraph (3)(A)-(E) of this subsection are essential unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data elements in paragraph (3)(A)-(E) of this subsection;

(II) the data element specified in paragraph (3)(I) of this subsection is essential when submitting claims to secondary payor HMOs or preferred provider carriers;

(ii) if respond "no," the data elements are not considered essential if the claim is accompanied by a copy of a document signed by the enrollee or insured that there is no other health care coverage.

(M) patient's or authorized person's signature or notation that the signature is on file with the physician or provider (HCFA 1500, field 12);

(N) subscriber's or authorized person's signature or notation that the signature is on file with the physician or provider (HCFA 1500, field 13);

(O) date of current illness, injury, or pregnancy (HCFA 1500, field 14);

(P) first date of previous same or similar illness (HCFA 1500, field 15);

(Q) diagnosis codes or nature of illness or injury (HCFA 1500, field 21);

(R) date(s) of service (HCFA 1500, field 24A);

(S) place of service codes (HCFA 1500, field 24B);

(T) type of service code (HCFA 1500, field 24C);

(U) procedure/modifier code (HCFA 1500, field 24D);

(V) diagnosis code by specific service (HCFA 1500, field 24E);

(W) charge for each listed service (HCFA 1500, field 24F);

(X) number of days or units (HCFA 1500, field 24G);

(Y) physician's or provider's federal tax ID number (HCFA 1500, field 25);

(Z) total charge (HCFA 1500, field 28);

(AA) signature of physician or provider or notation that the signature is on file with the HMO or preferred provider carrier (HCFA 1500, field 31);

(BB) name and address of facility where services rendered (if other than home or office) (HCFA 1500, field 32); and

(CC) physician's or provider's billing name and address (HCFA 1500, field 33).

(2) Essential data elements for institutional providers. Unless otherwise agreed by contract, the data elements described in this paragraph are necessary for claims filed by institutional providers.

(A) provider's name, address and telephone number (UB-92, field 1);

(B) patient control number (UB-92, field 3);

(C) type of bill code (UB-92, field 4);

(D) provider's federal tax ID number (UB-92, field 5);

(E) statement period (beginning and ending date of claim period) (UB-92, field 6);

(F) patient's name (UB-92, field 12);

(G) patient's address (UB-92, field 13);

(H) patient's date of birth (UB-92, field 14);

(I) patient's gender (UB-92, field 15);

(J) patient's marital status (UB-92, field 16);

(K) date of admission (UB-92, field 17);

(L) admission hour (UB-92, field 18);

(M) type of admission (e.g. emergency, urgent, elective, newborn) (UB-92, field 19);

(N) source of admission code (UB-92, field 20);

(O) patient-status-at-discharge code (UB-92, field 22);

(P) value code and amounts (UB-92, fields 39-41);

(Q) revenue code (UB-92, field 42);

(R) revenue description (UB-92, field 43);

(S) units of service (UB-92, field 46);

(T) total charge (UB-92, field 47);

(U) HMO or preferred provider carrier name (UB-92, field 50);

(V) subscriber's name (UB-92, field 58);

(W) patient's relationship to subscriber (UB-92, field 59);

(X) patient's/subscriber's certificate number, health claim number, ID number (UB-92, field 60);

(Y) principal diagnosis code (UB-92, field 67);

(Z) attending physician ID (UB-92, field 82);

(AA) signature of provider representative or notation that the signature is on file with the HMO or preferred provider carrier (UB-92, field 85); and

(BB) date bill submitted (UB-92, field 86).

(3) Data elements that are necessary, if applicable. Unless otherwise agreed by contract, the data elements contained in this paragraph are necessary for claims filed by physicians or providers if circumstances exist which render the data elements applicable to the specific claim being filed. The applicability of any given data element contained in this paragraph is determined by the situation from which the claim arose.

(A) other insured's or enrollee's name (HCFA 1500, field 9), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(B) other insured's or enrollee's policy/group number (HCFA 1500, field 9a), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(C) other insured's or enrollee's date of birth (HCFA 1500, field 9b), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(D) other insured's or enrollee's plan name (employer, school, etc.) (HCFA 1500, field 9c), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(E) other insured's or enrollee's HMO or insurer name (HCFA 1500, field 9d), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(F) subscriber's plan name (employer, school, etc.) (HCFA 1500, field 11b) is applicable if the health benefit plan is a group plan;

(G) prior authorization number (HCFA 1500, field 23), is applicable when prior authorization is required;

(H) whether assignment was accepted (HCFA 1500, field 27), is applicable when assignment under Medicare has been accepted;

(I) amount paid (HCFA 1500, field 29), is applicable if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in accordance with paragraph (1)(L) of this subsection and as required by subsection (e) of this section;

(J) balance due (HCFA 1500, field 30), is applicable if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber;

(K) covered days (UB-92, field 7), is applicable if Medicare is a primary or secondary payor;

(L) noncovered days (UB-92, field 8), is applicable if Medicare is a primary or secondary payor;

(M) coinsurance days (UB-92, field 9), is applicable if Medicare is a primary or secondary payor;

(N) lifetime reserve days (UB-92, field 10), is applicable if Medicare is a primary or secondary payor, and the patient was an inpatient;

(O) discharge hour (UB-92, field 21), is applicable if the patient was an inpatient, or was admitted for outpatient observation;

(P) condition codes (UB-92, fields 24-30), are applicable if the HCFA UB-92 manual contains a condition code appropriate to the patient's condition;

(Q) occurrence codes and dates (UB-92, fields 31-36), are applicable if the HCFA UB-92 manual contains an occurrence code appropriate to the patient's condition;

(R) occurrence span code, from and through dates (UB-92, field 36), is applicable if the HCFA UB-92 manual contains an occurrence span code appropriate to the patient's condition;

(S) HCPCS/Rates (UB-92, field 44), is applicable if Medicare is a primary or secondary payor;

(T) prior payments - payor and patient (UB-92, field 54), is applicable if payments have been made to the physician or provider by the patient or another payor or subscriber, on behalf of the patient or subscriber, or by a primary plan as required by subsection (e) of this section;

(U) diagnoses codes other than principle diagnosis code (UB-92, fields 68-75), is applicable if there are diagnoses other than the principle diagnosis;

(V) procedure coding methods used (UB-92, field 79), is applicable if the HCFA UB-92 manual indicates a procedural coding method appropriate to the patient's condition;

(W) principal procedure code (UB-92, field 80), is applicable if the patient has undergone an inpatient or outpatient surgical procedure; and

(X) other procedure codes (UB-92, field 81), is applicable as an extension of subparagraph (W) of this paragraph if additional surgical procedures were performed.

(c) Attachments. In addition to the required data elements set forth in subsection (b) of this section, HCFA has developed a variety of manuals that identify various attachments required of different physicians or providers for specific services. An HMO or a preferred provider carrier may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. Before any attachments may be required, the HMO or preferred provider carrier shall satisfy the notification procedures set forth in §21.2804 of this title (relating to Disclosure of Necessary Attachments).

(d) Additional clean claim elements. Additional elements beyond the required data elements and attachments identified in subsections (b) and (c) of this section may be required. Before any additional clean claim elements may be required, the HMO or the preferred provider carrier shall satisfy the notification procedures set forth in §21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements).

(e) Coordination of benefits or non-duplication of benefits. If a claim is submitted for covered services or benefits in which coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) and §11.511(1) of this title (relating to Optional Provisions) is necessary, the amount paid as a covered claim by the primary plan is considered to be an essential element of a clean claim for purposes of the secondary plan's processing of the claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section. If a claim is submitted for covered services or benefits in which non-duplication of benefits pursuant to §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is considered to be an essential element of a clean claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section. If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set forth in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage) the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is considered to be an essential element of a clean claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section.

(f) Format of elements. The required elements of a clean claim set forth in subsections (b), (c), (d) and (e), if applicable, of this section must be complete, legible and accurate.

(g) Additional data elements, attachments, or information. The submission of data elements, attachments, or information by a physician or provider with a claim in addition to those required for a clean claim under this section shall not render such claim deficient.

§21.2804. Disclosure of Necessary Attachments.

For attachments described in §21.2803(c) of this title (relating to Elements of a Clean Claim) to be required as part of a clean claim, the HMO or preferred provider carrier shall comply with paragraphs (1), (2), or (3) of this section. If an HMO or preferred provider carrier requests such an attachment and fails to comply with paragraphs (1), (2), or (3) of this section, the request will not extend the statutory claims payment period.

(1) Written notice. The HMO or preferred provider carrier may provide written notice to all affected physicians or providers that such attachments are necessary. The notice shall identify with specificity the attachment(s) required and must be received by the physician or provider at least 60 calendar days before requiring such attachment as an element of a clean claim.

(2) Manual or other document that sets forth the claims filing procedures. The HMO or preferred provider carrier may provide updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures. The revision shall identify with specificity the attachment(s) required and must be received by the physician or provider at least 60 calendar days before requiring such attachment as an element of a clean claim.

(3) Contract. The HMO or preferred provider carrier may provide for such attachments to be required as part of a clean claim in the contract between the HMO or preferred provider carrier and the physician or provider. As a means of setting forth the attachments that are required as part of a clean claim, the contract shall either identify with specificity the attachments that are required as elements of a clean claim or reference the physician or provider manual or other document that sets forth the claims filing procedures. If the contract identifies with specificity the attachments that are required as elements of a clean claim, the additional written notice as specified in paragraphs (1) and (2) of this section is not required. If the contract references the physician or provider manual or other document that sets forth the claims filing procedures as a means of setting forth the attachments that are required as part of a clean claim, the notice specified in paragraph (2) of this section is required. If the contract provides for mutual agreement of the parties as the sole mechanism for requiring attachments, then the written notice

specified in paragraphs (1) and (2) of this section does not supersede the requirement for mutual agreement.

§21.2805. Disclosure of Additional Clean Claim Elements.

An HMO or preferred provider carrier may require additional elements for clean claims beyond the required data elements and attachments identified in §21.2803(b), (c) and (e) of this title (relating to Elements of a Clean Claim). To require such additional elements as part of a clean claim, the HMO or preferred provider carrier shall comply with paragraphs (1), (2), or (3) of this section. If an HMO or preferred provider carrier requests additional elements as part of a clean claim and fails to comply with paragraphs (1), (2), or (3) of this section, the request will not extend the statutory claims payment period.

(1) Written notice. The HMO or preferred provider carrier may provide written notice to all affected physicians or providers that such additional elements are necessary. The notice shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(2) Manual or other document that sets forth the claims filing procedures. The HMO or preferred provider carrier may provide updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures. The revision shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(3) Contract. The HMO or preferred provider carrier may provide for such additional elements to be required in the contract between the HMO or preferred provider carrier and the physician or provider. As a means of setting forth the additional elements that are required as part of a clean claim, the contract shall either identify with specificity the additional required elements or reference the physician or provider manual or other document that sets forth the claims filing procedures. If the contract identifies with specificity the additional required elements, the additional written notice as specified in paragraphs (1) and (2) of this section is not required. If the contract references the physician or provider manual or other document that sets forth the claims filing procedures as a means of setting forth the additional required elements, the notice specified in paragraph (2) of this section is required. If the contract provides for mutual agreement of the parties as the sole mechanism for requiring additional clean claim elements, then the written notice specified in paragraphs (1) and (2) of this section does not supersede the requirement for mutual agreement.

§21.2806. Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements.

An HMO or preferred provider carrier may revise its requirements for data elements, attachments or additional clean claim elements that have previously been properly included as elements of a clean claim pursuant to §§21.2803(b), (c), (d), and (e), 21.2804, and 21.2805 of this title (relating to Elements of a Clean Claim, Disclosure of Necessary Attachments, and Disclosure of Additional Clean Claim Elements). To revise the requirements for data elements, attachments, or additional clean claim elements, the HMO or preferred provider carrier shall provide advance written notice to all affected physicians or providers of such revisions. The notice shall identify with specificity the revisions to data elements, attachments, or additional clean claim elements, and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider enforces such revisions to the requirements of a clean claim. If the contract between the HMO or preferred provider carrier and the physician or provider provides for mutual agreement of the parties as the sole mechanism for requiring revised data elements, attachments or additional clean claim elements that have previously been properly included as elements of a clean claim pursuant to §§21.2803(b), (c), (d), and (e), 21.2804, and 21.2805 of this title, then the written notice specified in this section does not supersede the requirement for mutual agreement.

§21.2807. Effect of Filing a Clean Claim.

(a) The statutory claims payment period begins to run upon receipt of a clean claim from a physician or provider at the address designated by the HMO or preferred provider carrier, in accordance with §21.2811 of this title (relating to Disclosure of Processing Procedures), whether it be the address of the HMO, preferred provider carrier, or a delegated claims processor. The date of claim payment is as determined in §21.2810 of this title (relating to Date of Claim Payment).

(b) After receipt of a clean claim, prior to the expiration of the statutory claims payment period specified in §21.2802(25)(B) of this title (relating to Definitions), an HMO or preferred provider carrier shall:

(1) pay the total amount of the clean claim in accordance with the contract between the physician or provider and the HMO or preferred provider carrier;

(2) deny the clean claim in its entirety after a determination that the HMO or preferred provider carrier is not liable for the clean claim and notify the physician or provider in writing why the clean claim will not be paid;

(3) notify the physician or provider in writing that the entire clean claim will be audited and pay 85% of the contracted rate on the claim to the physician or provider; or

(4) pay the portion of the clean claim for which the HMO or preferred provider carrier acknowledges liability in accordance with the contract between the physician or provider and the HMO or preferred provider carrier, and:

(A) deny the remainder of the clean claim after a determination that the HMO or preferred provider carrier is not liable for the remainder of the clean claim and notify the physician or provider in writing why the remainder of the clean claim will not be paid; or

(B) notify the physician or provider in writing that the remainder of the clean claim will be audited and pay 85% of the contracted rate on the unpaid portion of the clean claim to the physician or provider.

(c) With regard to a clean claim for a prescription benefit subject to the statutory claims payment period specified in §21.2802(25)(C) of this title (relating to Definitions), an HMO or preferred provider carrier shall:

(1) after receipt of an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to Insurance Code Article 3.70-3C, §3A(d) (Preferred Provider Benefit Plans) and Article 20A.18B(d), pay or deny the prescription benefit claim, in whole or in part, within 21 calendar days after the treatment is authorized; or

(2) after receipt of an electronically submitted clean claim for a prescription benefit that is electronically adjudicated and electronically paid pursuant to §21.2814 of this title (relating to

Electronic Adjudication of Prescription Benefits) pay or deny the prescription benefit claim, in whole or in part, within 21 calendar days after the clean claim is electronically transmitted.

§21.2808. Effect of Filing Deficient Claim.

If a submitted claim is determined by an HMO or preferred provider carrier to be deficient, the HMO or preferred provider carrier shall notify the physician or provider submitting the claim that the claim is deficient within 45 calendar days of the HMO's or preferred provider carrier's receipt of the claim. The HMO or preferred provider carrier and the physician or provider may agree to a different time period, not to exceed 45 calendar days, for notification that a claim is deficient. If an electronically submitted claim for a prescription benefit is determined by an HMO or preferred provider carrier to be deficient, the HMO or preferred provider carrier shall notify the provider within 21 calendar days of the HMO's or preferred provider carrier's receipt of the claim.

§21.2809 Audit Procedures.

(a) If an HMO or preferred provider carrier is unable to pay or deny a clean claim, in whole or in part, within the statutory claims payment period specified in §21.2802(25)(B) of this title (relating to Definitions), the unpaid portion of the claim shall be classified as an audit, and the HMO or preferred provider carrier shall pay 85% of the contracted rate on the unpaid portion of the clean claim within the statutory claims payment period. Payment of 85% of the contracted rate on the clean claim is not an admission that the HMO or preferred provider carrier acknowledges liability on that claim.

(b) Upon completion of the audit, if the HMO or preferred provider carrier determines that a refund is due from a physician or provider, such refund shall be made within 30 calendar days of the later of notification to the physician or provider of the results of the audit or exhaustion of any subscriber or patient appeal rights if a subscriber or patient appeal is filed before the 30-calendar-day refund period has expired, and may be made by any method, including chargeback against the physician or provider, or agreements by contract.

(c) Upon completion of the audit, if the HMO or preferred provider carrier determines that additional payment is due to the physician or provider, such additional payment shall be within 30 calendar days after the completion of the audit.

§21.2811. Disclosure of Processing Procedures.

(a) In contracts with physicians or providers, or in the physician or provider manual or other document that sets forth the procedure for filing claims, or by any other method mutually agreed upon by the contracting parties, an HMO or preferred provider carrier must disclose to its physicians and providers:

(1) the address, including a physical address, where claims are to be sent for processing;

(2) the telephone number at which physicians' and providers' questions and concerns regarding claims may be directed;

(3) any entity along with its address, including physical address and telephone number, to which the HMO or preferred provider carrier has delegated claim payment functions, if applicable; and

(4) the address and physical address and telephone number of any separate claims processing centers for specific types of services, if applicable.

(b) An HMO or preferred provider carrier shall provide no less than 60 calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected physicians and providers with whom the HMO or preferred provider carrier has contracts.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

An HMO or preferred provider carrier that fails to comply with the requirements of §21.2807(b) of this title (relating to Effect of Filing a Clean Claim) and §21.2809(a) and (c) of this title (relating to Audit Procedures) shall pay the full amount of the billed charges submitted on the clean claim or pay the contracted penalty rate for late payment set forth in the contract between the provider or physician and the HMO or preferred provider carrier. Any amount previously paid or any charge for a non-covered service shall be deducted from the payment. This section shall not apply when there is failure to comply with a contracted claims payment period of less than 45 calendar days as provided in §21.2802(25)(A) of this title (relating to Definitions), and Article 3.70-3C, §3(m) or Article 20A.09(j) of the Insurance 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 May 3, 2000.

TRD-200003121
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 23, 2000
Proposal publication date: December 17, 1999
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts amendments to §114.5 (Transportation Planning Definitions); the repeal of existing §114.270 (Transportation Control Measures); and new §114.270 (Transportation Control Measures). The commission also adopts corresponding revisions to the state implementation plan (SIP) sections concerning transportation control measures (TCMs). The commission adopts these actions to §114.5, §114.270, and the associated SIP in order to revise the rule to meet the United States Environmental Protection Agency (EPA) guidance requirements and allow nonattainment area metropolitan planning organizations (MPOs) to substitute TCMs without a SIP revision. Section 114.270 is adopted with changes to the proposed text as published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10508). Section 114.5 and the repeal of existing §114.270 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

TCMs are transportation projects and related activities that are designed to achieve on-road mobile source emissions reductions and are included as control measures in the SIP. Allowable types of TCMs are listed in §108 (Air Quality Criteria and Con-

trol Techniques) of the Federal Clean Air Act (FCAA), 1970, as amended, (42 United States Code (USC), §7408) and defined in the federal transportation conformity rule found in Title 40 Code of Federal Regulations (40 CFR), Part 93 (Determining Conformity of Federal Actions to State or Federal Implementation Plans). In general, a TCM is a transportation related project that reduces vehicle use or changes traffic flow and/or congestion conditions. A project that adds single-occupancy-vehicle roadway capacity or is based on improvements in vehicle technology or fuels is not eligible as a TCM. Nonattainment area MPOs work in conjunction with the commission to develop TCMs for inclusion in the SIP. The MPOs are responsible for ensuring the TCM emission reduction targets and time lines are met.

The current TCM rule allows TCMs to be grouped and quantified by categories, without project specific descriptions and associated estimated emissions reductions. Nonattainment area MPOs can substitute TCMs within, but not between, categories without a SIP revision. The EPA objected to the current TCM rule because it does not require the listing of specific TCM projects or allow for public comment on TCM substitutions. The EPA SIP guidance for TCMs requires states to provide EPA with a complete description of the TCM and its estimated emission reduction benefits. MPOs are often reluctant to list specific TCMs in the SIP because specific project locations and emission reductions are often subject to change. Under the current rule, a SIP revision is required to substitute TCMs between categories, and a SIP revision triggers a transportation conformity determination which may not have been necessary otherwise. There are also adverse transportation conformity consequences if TCMs are not completed on schedule.

The adopted rule will require TCM project specific descriptions and estimated emissions reductions to be included in the SIP. The adopted TCM rule will also allow nonattainment area MPOs to substitute TCMs without a SIP revision if the substitution results in equal or greater emission reductions. The TCM substitution process explained in this rule is the only way in which a TCM may be substituted without constituting a SIP revision for transportation conformity purposes. The TCM substitution process will require interagency consultation and a public comment period. The commission is responsible for conducting the public participation process and approving the substitute TCM. The TCM substitution process parallels the rulemaking and SIP revision processes for the purpose of public participation. The adopted rule will meet EPA TCM requirements and will allow the MPOs, after interagency consultation, to substitute TCMs without SIP revisions. This flexibility may also encourage MPOs to list more TCMs in the SIP and facilitate reaching SIP emission reduction requirements.

SECTION BY SECTION RULE DISCUSSION

The amendment to the definition of TCM in §114.5 will mirror the federal definition found in 40 CFR §93.101 (Definitions).

The existing rule in §114.270 is repealed and a new §114.270 is adopted because of the extensive changes to the section. The new section states the purpose of the rule in §114.270(a), and specifies that the rule applies to nonattainment or maintenance areas in §114.270(b). The purpose of the rule is to implement TCM requirements, address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas, and provide a method for TCM substitution of without a SIP revision. The rule applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas, as defined in 30 TAC §101.1 (Definitions).

General requirements are addressed in §114.270(c). These requirements indicate that all TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with §114.260, Transportation Conformity; 40 CFR 93, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws, as amended; the FCAA; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2-89-020, September 1990. This section was added in response to a comment from the EPA indicating that these documents are the regulatory criteria for TCMs.

Nonattainment and maintenance area MPO responsibilities are addressed in §114.270(d). The MPOs are responsible for ensuring that all responsibilities required by §114.270(c) are fulfilled. Paragraphs (1) - (5) and (8) of the proposed subsection (c) have been deleted because they reiterate the requirements of new §114.270(c). New §114.270(d)(1) was added to specify that the MPO responsibilities are stated in subsection (c). Section 114.270(c)(6) has been renumbered to §114.270(d)(2) and requires MPOs to maintain complete and accurate records on TCMs for five years and make these records available to appropriate agencies. Section 114.270(d)(2) has been revised to indicate that the records must be maintained for all TCMs and be maintained on a rolling basis. Section 114.270(c)(7) has been renumbered to §114.270(d)(3), which has been revised to indicate that the records will also be made available to the public. The proposed §114.270(c)(8) has been deleted because it reiterated the requirements of §114.270(c) and (f).

Responsibilities for an implementing agency are addressed in §114.270(e). Paragraph (1) has been added to indicate that implementing agencies are responsible to ensure that all responsibilities required by §114.270(c) are fulfilled. Paragraph (2) has been revised to indicate that implementing agencies will have the responsibility to provide to the MPO the following information upon request: 1) a complete description of the TCMs and their associated emission reduction benefits; 2) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program(s); 3) evidence that funding has been, or will be, obligated to implement the TCMs; and 4) a description of the monitoring program to assess the TCM's effectiveness. The proposed paragraph (4) was renumbered to paragraph (2)(D) and was revised in response to an EPA comment by removing the phrase "and to allow for necessary in-place corrections or alterations."

The TCM substitution process is outlined in §114.270(f). The adopted rule provides a TCM substitution process that allows nonattainment area MPOs to change the TCMs used as SIP control strategies without a SIP revision if the substitution results in equal or greater emission reductions. Substitute TCM(s) must be implemented in the same time frame as the original TCM(s). If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program plan and metropolitan transportation plan adopted by the MPO. The substitute measures must be fully implemented within two years of the original implementation date in order to meet the requirement for timely TCM implementation under 114.260. In order for the commission to approve substitute measures,

MPOs must provide evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures. Commitments to implement the substitute measures must be made by the agency with legal authority for implementation. Section 114.270(f) was revised for clarification purposes in response to comments from the EPA. Subsection (f) was also revised in several places to indicate that the commission will approve, rather than adopt, substitute measures and that the commission approval shall not constitute a SIP revision for the purpose of transportation conformity.

The analysis of the substitute measures is addressed in §114.270(f)(2), which indicates that the analysis must be consistent with the methodology used for evaluating measures in the SIP. If emissions models and/or transportation models have changed since measures in the SIP were evaluated, the TCM to be replaced and the substitute TCM must be evaluated using the latest modeling techniques. Key methodologies and assumptions that must be consistent are EPA approved regional and hot-spot models, the area transportation model, and population and employment growth projections.

Section 114.270(f)(3) indicates that the MPO will convene a committee (or working group) to identify and evaluate possible substitute measures. The committee shall include members from all affected jurisdictions, the commission, and state and local transportation agencies. Subparagraph (3)(A) was revised in response to the EPA comment to include local air agencies as members of the working group. The working group will also consult with EPA Region 6. This consultation may be accomplished by sending copies of all draft and final documents, agendas, and reports to EPA Region 6. The MPO, commission, and EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM.

Section 114.270(f)(4) was revised in response to EPA's comment to clarify the parties which must concur.

Section 114.270(f)(5) was revised in response to comments to clarify that the commission will approve the substitute measures and conduct the public hearing and comment process. A public comment period with reasonable (30-days) notice must be held on the substitute TCMs before they can be approved by the commission and included in the SIP. After the comment period closes, the commission will submit to EPA Region 6 a summary of comments received, along with the response to comments. EPA will notify the commission within 14 days if its concurrence with the substitution has changed as a result of public comments. Paragraph (5) has also been revised to indicate that the TCM substitution process parallels the rulemaking and SIP processes for the purpose of public participation; however, commission approval of a substitute TCM shall not constitute a SIP revision for the purpose of transportation conformity. Subparagraphs (C) - (F) of paragraph (5) have been deleted, because they do not reflect the public participation requirements associated with the rulemaking and SIP processes.

Section 114.270(f)(7) was revised in response to comments to clarify that EPA will notify the commission within 14 days of receipt summary of comments and responses from the commission. If EPA fails to notify the commission within 14 days, EPA is deemed to concur.

Section 114.270(f)(9) states that the commission will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitute and original TCMs, including requirements and schedules. The documentation will also include a description of the substitution process, including committee or working group members, the public hearing and comment period, EPA's concurrence, and approval by the commission. The documentation will be submitted to EPA following approval by the commission of the substitute measure and will be made available to the public as an attachment to the SIP.

Section 114.270(f)(10) was deleted in response to comments that it limited the commission enforcement authority. Section 114.270(f)(10) had indicated that the commission would seek a financial penalty against the MPO or implementing agency only in the case of an egregious or knowing violation of the provisions of this section.

SECTION BY SECTION SIP ANALYSIS

The existing Vehicle Miles Traveled (VMT) Offset section (VI. B. 8. b.) was revised to update the date and section reference to the transportation control measure rule found in 30 TAC 114.270. No change to the technical portion of the VMT Offset SIP is being adopted in this revision. The section was also administratively reformatted to conform to the new SIP format being used by the commission.

The adopted new Transportation Control Measure section (VI. B. 8. c.) states the requirements relating to TCMs, addresses the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas, and provides a method for the substitution of TCMs without a SIP revision. The SIP applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. The amendments to Chapter 114 are not anticipated to 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 because the amendments are procedural in nature, are intended to conform state TCM rules to EPA guidance, and allow nonattainment area MPOs to substitute TCMs without a SIP revision. In addition, the rulemaking action does not meet the applicability requirements of a "major environmental rule." The rulemaking action does not exceed a standard set by federal law, and has been completed to satisfy the federal requirement set out in 40 CFR §93.113 which requires timely implementation of TCMs in order for serious and above ozone nonattainment areas to demonstrate transportation conformity. In addition, the rulemaking action neither exceeds an express requirement of state law, nor exceeds a requirement of a delegation agreement. Finally, the rule conforms to EPA rules and guidance regarding TCM requirements.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking action is to implement requirements relating to TCMs as required by 42 USC, §7482(c)(5). TCMs are transportation-related projects that are designed to reduce on-road mobile source emissions and are included in the area's SIP. These requirements address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a SIP revision. The adopted rule will require TCM project specific descriptions and estimated emissions reductions to be included in the SIP. The adopted rule will also allow nonattainment area MPOs to substitute TCMs without a SIP revision if the substitution(s) result(s) in equal or greater emissions reductions. The TCM substitution process will require interagency consultation and a public comment period.

The adopted rule change will meet EPA TCM requirements and will allow the MPOs to substitute TCMs without SIP revisions. This flexibility may also encourage MPOs to list more TCMs in the SIP and may facilitate achievement of SIP emissions reduction requirements.

Therefore, this revision does not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission determined that the adopted 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 rules in 30 TAC Chapter 281, Subchapter B, (Consistency with the CMP). The commission reviewed this adopted action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the adopted action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR to protect and enhance air quality in the coastal area. This rule is implementing, within the state, a portion of 40 CFR 93 which is protective of the air quality in the coastal area because it requires transportation plans to conform to the SIP. Therefore, the rule is in agreement with the CMP policy governing air pollutant emissions.

There were no comments regarding the consistency of the proposed rule with the CMP during the public comment period.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on December 21, 1999. There were no attendees at the public hearing. The comment period was originally scheduled to close on December 27, 1999, but at the request of EPA, the comment period was extended (24 TexReg 12146, dated December 31, 1999) until January 28, 2000. Two comment letters were received from the Texas Department of Transportation (TxDOT), one comment letter was received from EPA, and one comment letter was received from an individual. Both TxDOT letters generally supported the proposal and welcomed the increased flexibility in the rules. EPA did not express support or opposition to the proposal, however, it submitted several changes that must be made to the rule language in order for the proposal to be approvable.

ANALYSIS OF TESTIMONY

TxDOT commented in support of the proposal and stated that the proposed amendments would simplify TCM substitution procedures.

The commission appreciates TxDOT's support.

EPA noted that EPA has not promulgated a TCM rule and its criteria for review of the proposal came from the FCAA, the federal transportation conformity rule, and EPA policies relating to SIPs, TCMs, and nonattainment areas.

The commission revised §114.270 by adding a new subsection (c) and renumbering the remaining subsections. This section indicates that all TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with 30 TAC §114.260, Transportation Conformity; 40 CFR 93, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, as amended; the FCAA; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2-89-020, September 1990. The intent of this section is to clarify MPO and implementing agency responsibilities and ensure that TCMs will be approvable by EPA. The remaining subsections have been renumbered and several paragraphs have been deleted because they reiterate the requirements of the new §114.270(c). The commission does not believe that it is appropriate to establish TCM requirements based on EPA SIP, TCM, and nonattainment area policies because these EPA policies are subject to various interpretations and changes.

An individual commented that the proposed changes allow local MPOs, rather than the commission, to hold public hearings regarding changes to TCMs. The individual noted that changing the TCMs in the SIP should be a state responsibility. The individual also mentioned that MPOs do not have the responsibility under the FCAA to ensure that the SIP has workable TCMs that get implemented.

The commission agrees that changing the TCMs in the SIP should be a state responsibility. The commission renumbered §114.270(e)(5) as §114.270(f)(5) and revised the language to clarify that public hearings regarding changes to TCMs will be conducted by the commission. The commission agrees that MPOs do not have the responsibility under the FCAA to ensure that the SIP has workable TCMs; however, §176(c)(2)(C) of the FCAA does give MPOs the responsibility of ensuring the timely implementation of TCMs.

An individual commented that allowing the withdrawal of TCMs by MPOs will allow MPOs to weaken or modify TCMs that work and substitute or dismantle TCMs with less commission oversight. The individual gave examples of high-occupancy vehicle (HOV) lanes being converted to congestion pricing, single occupancy vehicle lanes and toll roads being selected instead of rail lines or HOV lanes and also stated that the proposal encouraged the wrong type of transportation option.

The commission notes that §114.270(e), renumbered as §114.270(f), allows TCMs to be withdrawn only if they are

substituted with another TCM of equal or greater emissions reductions that will be implemented in the same time period as the original TCM. MPOs, therefore, are not allowed to weaken, dismantle, or modify TCMs that work without guaranteeing that the substitute TCM will achieve the emissions reduction target. The commission's oversight has not been lessened; the commission must approve the TCM substitution. The commission does not have the authority to select transportation projects or determine transportation options as referenced in the commenter's examples. However, the commission notes that §114.270(f) would not allow the MPOs to select and substitute an alternative TCM unless the project's SIP emissions reductions target is met by the substitute TCM. The rule changes should encourage transportation options that are beneficial to air quality.

An individual commented that citizens need to be able to appeal to EPA if TNRCC continues to abdicate its responsibilities in the realm of TCMs. The individual noted that a formal process that includes changing TCMs through the SIP makes citizen input a more powerful tool. The individual referred to the following statements in the SIP: "Nonattainment area MPOs objected to the current TCM rule because it does not provide a method of substituting TCMs between categories without a SIP revision. SIP revisions trigger transportation conformity determinations that may not have been necessary otherwise. There are also adverse transportation conformity consequences if all TCMs are not completed on schedule." The individual referred to these statements as evidence of TNRCC's avoidance of its responsibilities. The individual also noted that TCM substitutions through SIP revisions give EPA and TNRCC a hammer to force more complete and periodic conformity determinations so that mid-course corrections, monitoring, and auditing of MPO progress can be done.

The commission notes that the rule includes a formal public comment period which allows citizens to have the same opportunities for input as that for a SIP revision. As part of its TCM responsibilities, the commission will conduct the public hearing and comment period. The statements referred to as evidence of the commission's avoidance of its responsibilities were included to explain why MPOs are often reluctant to include TCMs in the SIP. Frequently, TCMs are planned transportation projects that will be implemented regardless of whether they are included as TCMs in the SIP, so it is not necessary to include them in the SIP to ensure implementation. Transportation projects are also often subject to change; for example, the planned project limits or implementation dates may be changed before implementation due to new information or delays in the process. Requiring SIP revisions to accommodate project changes discourages MPOs from committing to SIP TCMs, since the SIP revision triggers a transportation conformity determination. Transportation conformity determinations are resource intensive, so MPOs often do not want to include transportation projects as SIP TCM commitments. The commission believes that the required frequency of conformity determinations is sufficient to allow for mid-course corrections and monitoring of MPO progress and that increased frequency of conformity determinations triggered by TCM related SIP revisions only discourages the inclusion of TCMs as SIP commitments.

An individual stated that the idea that the rule change is predicated by EPA is false, because all the EPA wants is a listing of specific TCM projects and allowance of public comment on TCM substitutions. The individual stated that this could be accomplished by changing the SIP and holding an official TNRCC public hearing.

The commission notes that the current §114.270 allows TCMs to be grouped and quantified by category. A rule revision was needed to require the listing and quantification of specific TCM projects in the SIP. The commission agrees that public comment on TCM substitutions could be accomplished through the SIP revision process; however, SIP revisions trigger transportation conformity determinations that may not otherwise be required. The transportation conformity process is very resource intensive and time consuming, which discourages MPOs from making TCM SIP commitments. The commission believes that it is detrimental to air quality efforts to discourage MPOs from making TCM SIP commitments, and therefore believes it in the best interest of the state to allow TCM substitutions without a SIP revision.

EPA objected to the wording of the preamble, SIP narrative, and §114.270(c)(1). EPA stated that the wording implied that the MPOs will identify a list of TCMs and their emissions reductions for inclusion in the SIP, but the SIP commitment would only be for a specified number of those TCMs and a specified amount of emissions reductions. EPA also stated that this approach is not acceptable or consistent with the TCM substitution process specified in §114.270(e) and would be confusing in the future. EPA also suggested modifying the language in §114.270(c)(1) by deleting "from which a specified number of TCMs will be implemented and a specified amount of emissions reduction will be achieved." EPA further suggested that the section be modified to include "TCM implementation schedule and completion date" instead of "TCM completion date."

The intent of this wording was to provide additional flexibility to MPOs to facilitate the inclusion of TCMs in the SIP. The commission notes that the EPA had previously agreed to this concept; however, the commission agrees that the concept could be confusing in the future. The commission believes that TCM requirements can be best addressed by the new §114.270(c) as stated previously. The commission has deleted §114.270(c)(1) accordingly. The preamble and SIP narrative have also been revised.

EPA stated that the last sentence in the bracket in §145.5(3) {sic} must be deleted since it is not an appropriate definition for TCMs.

The commission notes that brackets define deleted text; therefore all text within the brackets in §114.5(3) is deleted.

EPA stated that §145.5 {sic} does not define the terms MPO and implementing agency and that these terms must either be defined in this section or cross references given to the definitions elsewhere in TNRCC rules.

The commission notes that §114.5 of the proposal contains definitions (1) and (2), with the notation of (No Change), which means that these definitions have not changed as a result of this proposal. Definition (1) is the term "implementing agency" and definition (2) is the term "MPO." Listing the definitions as (No Change) is *Texas Register* practice for the proposal. The actual language for these definitions may be found on the commission web site or the Secretary of State web site, on the page where the current rules are located.

An individual recommended revising §114.270(a) to add TNRCC as a responsible party to ensure that TCMs are looked at via the substitution mechanism.

The commission disagrees that it is not a responsible party to ensure TCMs are reviewed via the substitution mechanism. The commission renumbered §114.270(e) as §114.270(f) and revised §114.270(f)(5) to indicate that the public comment period will be conducted by the commission. Section 114.270(f)(1)(D) indicates that the commission is responsible for approving the substitute TCM. The commission is also included in the working group required by §114.270(f)(3) and must concur with the TCM substitution as indicated by the current §114.270(f)(4). These provisions ensure that the commission will look at and allow TCMs only via the substitution mechanism described herein and that no further revisions to the SIP will be necessary as a result of the TCM substitution.

An individual noted that nothing in §114.270(c) deals with MPOs failing to carry out their responsibilities or subverting TCMs. The commmenter also stated that monitoring, tracking, auditing, and enforcement must be built in by TNRCC to ensure compliance.

The commission has added a new §114.270(c), which indicates that all TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with §114.260, Transportation Conformity; Title 40 Code of Federal Regulations, Part 93 (40 CFR 93), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, as amended; the FCAA, 42 USC 1970, as amended; and the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2- 89-020, September 1990. The commission believes that the new section will ensure adequate monitoring, tracking, auditing, and enforcement of TCMs and no further revisions are necessary.

EPA indicated that the commission needs to re-examine §114.270(c)(2) to determine whether the paragraph covers all aspects of TCM evaluation and tracking, because 40 CFR 93.113 addresses timely implementation of TCMs and may not be inclusive of TCM evaluation and tracking as a general requirement for the MPO.

The commission deleted the language in §114.270(c)(2) as proposed and replaced it with the new §114.270(c) language. The commission believes the new language will ensure adequate TCM evaluation and tracking.

EPA commented that §114.270(c)(3) should indicate that both the commitments from implementing agencies and evidence of these commitments will be a part of the control strategy SIPs and will be submitted to EPA for approval.

The commission has deleted §114.270(c)(3) and replaced it with the new §114.270(c). The commission believes that the new section will ensure that adequate evidence of commitments from implementing agencies is included in the SIP. The commission also notes that the EPA TCM SIP guidance document referenced in subsection (c) does not require implementing agencies' commitments to be included in the SIP; it merely requires evidence that the TCM was properly approved by a jurisdiction with legal authority to commit to and execute the measure to be included in the SIP.

EPA requested that §114.270(c)(6) be revised to clarify that the MPO is required to keep a continuous record of the TCMs and suggested adding the phrase "on a rolling basis" to the phrase "maintain complete and accurate records for at least five years."

The commission agrees that the clarifying language should be added to §114.270(c)(6) to indicate that the MPO is required to keep a continuous record of the TCMs and has added the phrase "on a rolling basis" accordingly. The commission has also renumbered §114.270(c)(6) as §114.270(d)(2).

An individual stated that §114.270(c)(6) needs to define effectiveness. The individual also commented that, under §114.270(c)(6)(A), TNRCC must show the TCM is working as envisioned and emissions are being reduced. The individual further noted that there are currently no specific emissions targets for individual transportation projects and indicated that this needs to be changed so that individual projects' emissions characteristics are known. The individual also stated that each TCM should be evaluated at buildout, capacity, or maximum operating levels.

The commission notes that §114.270(c)(6) has been renumbered as §114.270(d)(1) and believes that §114.270(d)(2)(A) - (D) adequately defines TCM effectiveness. The commission also notes that §114.270(d)(2)(C) requires an annual estimate of the emission reductions achieved from implementation of the TCM and a comparison of the actual and projected reductions. This requirement ensures examination of the TCM to determine that it is working as envisioned and emissions are reduced. The commission agrees that there are currently no specific emissions targets for individual transportation projects and notes that this was one of the reasons for the rule change. The new §114.270(c) requires project-specific emissions estimations. The commission agrees that TCMs should be evaluated at buildout, capacity, or maximum operation levels, if these levels are reflective of real or expected conditions.

EPA commented that §114.270(c)(6)(D) is in conflict with §114.270(e), the TCM substitution process, and indicated that the rule should clarify that any modification or replacement of a SIP TCM must comply with the provisions of §114.270(e), since the MPO does not have any unilateral authority to make modifications to the SIP TCMs.

The commission notes that §114.270(c)(6) requires the MPOs to maintain records of TCMs and indicates what must be included in those records. Accordingly, §114.270(c)(6)(D) (renumbered as §114.270(d)(2)(D)), merely indicates that MPOs must keep records of any modifications to the TCM since the last annual report and/or projected modifications for the next reporting period to compensate for a shortfall in the implementation of the TCM or in the associated emissions reductions. Section 114.270(d)(2)(D) does not allow the MPO to modify TCMs, and therefore is not in conflict with §114.270(f).

Both EPA and an individual commented that §114.270(c)(7) should require that the MPO's record on the TCMs be available to the public as well as local, state, and federal agencies.

The commission agrees and has revised §114.270(c)(7) accordingly, as well as renumbered §114.270(c)(7) as §114.270(d)(3).

EPA noted that §114.270(c)(8)(B) refers to coordination with the same or other implementing agencies and indicated that the rule must clearly identify the agencies so that the MPO can complete its coordination. EPA also noted that §114.270(e) requires the MPO and other specifically named agencies to consult and determine the TCM equivalency.

The commission has deleted §114.270(c)(8)(B) because the requirements of the TCM substitution process found in §114.270(f) define TCM substitution procedures.

An individual commented that the term "equivalent" must be defined in §114.270(c)(8)(B) and suggested using "equal or greater in emissions reductions" instead of "equivalent to."

The commission has deleted §114.270(c)(8)(B) because the requirements of the TCM substitution process found in §114.270(f) define TCM substitution procedures.

EPA commented that if local implementing agencies referred to in §114.270(d)(1) - (4) means City Councils or County Commissioners, then EPA questioned the availability of technical experts at this level to address evaluation and determine the effectiveness of the TCMs. EPA commented that the TCM evaluation and effectiveness determination should be the responsibility of the MPOs.

Implementing agency is defined in §114.5 as an entity, transportation provider, organization, agency, or individual responsible for the design, procurement of funds, construction, operation, maintenance, management, monitoring, and, in conjunction with the metropolitan planning organization, compliance with transportation control measures. City councils or county commissioners are not explicitly defined as implementing agencies. The commission renumbered §114.270(d) as §114.270(e) and revised the language to clarify that implementing agencies are responsible for providing information to the MPO. In addition, under §114.260, the MPO is responsible for reporting TCM implementation and emission reduction status to the commission. The MPO, therefore, is also responsible for TCM evaluation and effectiveness determination.

EPA stated that §114.270(d)(4) is not consistent with §114.270(e) and must be revised, since implementing agencies do not have any authority to allow for necessary in-place corrections or alterations of TCMs.

The commission agrees with the EPA. The commission renumbered §114.270(d)(4) as §114.270(e)(4) and deleted the phrase "and to allow for necessary in-place corrections or alterations."

EPA stated that the first full sentence of §114.270(e) must be modified and suggested the wording be revised to read, "if a TCM is included in the SIP and infeasible to be implemented in the time frame specified in the applicable SIP."

The commission renumbered §114.270(e) as §114.270(f) and in response to the EPA suggestion, modified the first full sentence to read "if a TCM cannot be implemented by the implementation date specified in the SIP." TCMs are, by definition, included in the SIP.

An individual stated that TNRCC should be responsible for the interagency consultation process referenced in §114.270(e), since TNRCC is responsible for the SIP and its contents.

The current §114.270(f) requires the parties in the interagency consultation process established under §114.260 to determine whether a TCM continues to be appropriate. The commission is an active participant in the interagency consultation process specified in §114.260, as is the EPA, the Federal Highways Administration, the TxDOT, the MPO, the local transit agency, and the local air quality agency. The commission believes these parties to be the appropriate mix of transportation and air quality stakeholders for the working group. The commission also notes that the responsibility for final concurrence that a TCM is no longer appropriate is assigned to the commission and the MPO. The commission agrees that it is responsible for the SIP and its contents, but notes that MPOs are primarily responsible for ensuring timely TCM implementation, so MPO concurrence on a TCM's appropriateness is essential.

EPA suggested that §114.270(e)(1)(C) be revised to state "full implementation not later than two years from the scheduled. . .."

The commission agrees with the EPA. The commission renumbered §114.270(e)(1)(C) as §114.270(f)(1)(C) and revised the language accordingly.

An individual suggested adding "monitor" before "and enforce" in §114.270(e)(1)(D) to ensure that adequate tracking is done. The individual also indicated that the tracking should be done by TNRCC and not the MPOs.

The commission renumbered §114.270(e)(1)(D) as §114.270(f)(1)(D) and added "monitor" before "and enforce." The commission does not have the resources to adequately monitor all TCMs in the state's nonattainment areas, and therefore believes that this function is best delegated to the MPOs.

An individual commented that "consistent" should be removed from §114.270(e)(2) and be replaced by "equal to in results or better," since discretion needs to be reduced, not increased.

The commission disagrees. The term "consistent" indicates that the same methodology must be used for evaluating both the original and substitute TCM, which ensures that an accurate comparison between the two is made. The term "equal to in results or better" is subject to interpretation and does not ensure that accurate comparisons will be made.

In reference to §114.270(e)(2)(A), EPA stated that the commission must define inhalable particulate matter if it has not been defined elsewhere in state rules. EPA also stated that they prefer the term particulate matter.

The commission notes that the term "inhalable particulate matter" is the EPA definition of PM_{10} and PM fine. The commission defines the term "particulate matter" in 30 TAC §101.1, Item 71. The commission renumbered §114.270(e) as §114.270(f) and revised §114.270(f)(2)(A) to state "particulate matter" at the EPA's request.

An individual commented that the working group referenced in §114.270(e)(3) must notify the public of its meeting, be open to the public, have meetings in public, have the public participate in its deliberations, and have a public input session required at each meeting.

The commission disagrees. The public has ample opportunity for involvement in the TCM substitution process during the public comment period to be conducted by the commission. The commission notes that §114.270(f)(3) (§114.270(e) has been renumbered as §114.270(f)) does not prohibit public participation in the working group, it merely does not require it.

EPA requested that the commission add local air agencies to §114.270(e)(3)(A).

The commission agrees with the EPA's request. The commission renumbered §114.270(e)(3)(A) as §114.270(f)(3)(A) and revised the language accordingly.

EPA questioned whether the Federal Highway Administration (FHWA) should be a part of the concurring agencies on the TCM substitution process as defined by §114.270(e)(4). EPA recommended that the TCM substitution concurrence be limited to the MPO, state, and EPA. EPA further stated that if the commission retains the FHWA, then the Federal Transit Administration and the TxDOT should also be added to the list of concurring agencies, which would increase the time needed to complete the substitution process.

The commission agrees with EPA's recommendation. The commission renumbered §114.270(e)(4) as §114.270(f)(4) and revised the language accordingly.

An individual commented that, under §114.270(e)(4) and (7), EPA must have the final decision and not simply concur. The individual also stated that 14 days is not long enough for EPA to analyze any changes and give a reasoned judgement about such changes and suggested that EPA should have 45 to 60 days.

The commission does not agree that §114.270(f)(4) and (7) (renumbered from §114.270(e) to §114.270(f)) need to be revised to give EPA the final decision on TCM substitutions. Because the commission is responsible for the contents of the SIP and the TCM substitution process is a method of altering contents of the SIP, it is appropriate for the commission to be involved in the final decision on TCM substitutions. It is also appropriate for the MPO to be involved in the final decision because MPOs are primarily responsible for ensuring timely TCM implementation. The commission also notes that §114.270(f) requires EPA involvement in the substitution process long before the 14-day concurrence period. The EPA therefore would already be familiar with the specific TCMs involved in the substitution process and would only have to analyze any changes made in response to public comments. The commission believes that 14 days is an adequate time period for this purpose.

EPA commented that §114.270(e)(5) does not identify the agency that will approve the substitute measures and is thus responsible for conducting the public participation. EPA stated that, as written, they can not determine whose responsibility it is to do public participation and respond to public comments.

The commission agrees with the EPA. The commission renumbered §114.270(e)(5) as §114.270(f)(5) and revised the language to indicate that the commission approves the substitute measures and is responsible for conducting public participation.

EPA commented that, in reference to §114.270(e)(7), the commission must respond to all comments submitted. EPA stated that §114.270(e)(7) does not identify who will address and respond to public comments and requested clarification. EPA also requested that the text be modified to indicate that EPA shall notify the commission within 14 days of receipt of the commissions summary of comments and responses to comments.

The commission agrees with the EPA's comments. The commission renumbered §114.270(e)(7) as §114.270(f)(7) and revised the language to indicate that the commission will address and respond to all comments submitted. The commission has also revised §114.270(f)(7) to indicate that EPA shall notify the commission within 14 days of receipt of the commissions summary of comments and responses to comments.

EPA and an individual objected to §114.270(e)(10) because it limits the commissions enforcement authority and states that the commission will seek a financial penalty against the MPO or an implementing agency only in the case of an egregious or knowing violation of the provisions of this section.

The commission agrees and has deleted §114.270(e)(10) accordingly.

Subchapter A. DEFINITIONS

30 TAC §114.5

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

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 May 8, 2000.

TRD-200003202
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 28, 2000
Proposal publication date: November 26, 1999
For further information, please call: (512) 239-0348

♦ ♦ ♦

Subchapter G. TRANSPORTATION PLANNING

30 TAC §114.270

STATUTORY AUTHORITY

The repeal is adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The repeal is also adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 May 8, 2000.

TRD-200003203
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 28, 2000
Proposal publication date: November 26, 1999

For further information, please call: (512) 239-0348

♦ ♦ ♦

STATUTORY AUTHORITY

The new section is adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The new section is also adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

§114.270. Transportation Control Measures.

(a) Purpose. The purpose of this section is to implement requirements relating to transportation control measures (TCMs). These requirements address the roles and responsibilities of the metropolitan planning organizations (MPOs) and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a state implementation plan (SIP) revision.

(b) Applicability. This section applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) General. All TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with §114.260 of this title (relating to Transportation Conformity); Title 40 Code of Federal Regulations, Part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws, as amended); the Federal Clean Air Act, 42 United States Code, 1970, as amended; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2-89- 020, September 1990.

(d) MPO responsibilities. The MPO shall:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled;

(2) maintain, on a rolling basis, complete and accurate records of all TCMs for at least five years. TCM records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include the following:

(A) the annual status of the implementation of the TCM, including quantification of progress;

(B) an annual estimate of the funding and other resources expended toward implementing the TCM, and a comparison of the actual and projected expenditures;

(C) an annual estimate of the emission reductions achieved from implementation of the TCM, and a comparison of the actual and projected reductions; and

(D) any modifications to the TCM since the last annual report and/or projected modifications for the next reporting period to compensate for a shortfall in the implementation of the TCM or in the associated emissions reductions; and

(3) make such records available to representatives of the commission, the EPA, the Federal Highway Administration, the Federal Transit Administration, the Texas Department of Transportation, local air pollution agencies having jurisdiction in the area, and the public, upon request;

(e) Implementing agency responsibilities. The implementing agency shall have the responsibility to:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled; and

(2) provide to the MPO upon request:

(A) a complete description of the TCMs and their associated estimated emission reduction benefits;

(B) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program;

(C) evidence that funding has been, or will be, obligated to implement the TCMs; and

(D) a description of the monitoring program to assess the TCM effectiveness.

(f) TCM substitution process. If a TCM cannot be implemented by the implementation date specified in the SIP, the parties in the interagency consultation process established under §114.260 of this title shall determine whether the TCM continues to be appropriate. When the MPO and the commission concur that a TCM identified in the SIP is no longer appropriate for any reason, the agencies may initiate the following process to identify and approve a substitute TCM. This process is the only way in which a TCM may be substituted. Approval of substitute TCMs shall not constitute a SIP revision for the purpose of transportation conformity when this process is followed.

(1) A substitute TCM must provide for:

(A) equivalent or greater emissions reductions than the TCM to be replaced;

(B) implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program and metropolitan transportation plan adopted by the MPO;

(C) full implementation not later than two years from the scheduled implementation date of the original TCM in order to meet timely TCM implementation criteria under §114.260 of this title;

(D) evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures in order for the commission to approve the substitute TCM; and

(E) evidence of commitments to implement the substitute TCM must be made by the agency with legal authority for implementation.

(2) The analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs in the SIP. If emissions models and/or transportation models have changed since measures in the SIP were evaluated, both the TCM to be replaced and the substitute TCM shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions reductions will be achieved through implementation of the substitute TCM. Key methodologies and assumptions that must be consistent are:

(A) EPA approved regional and hot-spot (for carbon monoxide and particulate matter) emission models;

(B) the area transportation model; and

(C) population and employment growth projections.

(3) To identify and evaluate possible substitute TCMs, the MPO shall convene a committee or working group which shall consult with EPA Region 6. Consultation may be accomplished by sending copies of all draft and final documents, agendas, and reports to EPA Region 6. The committee or working group shall include:

(A) members from all affected jurisdictions, including local air agencies;

(B) the commission; and

(C) state and local transportation agencies.

(4) The MPO, the commission, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. All agreed upon substitute TCMs must be adopted by the commission following the public comment period and the EPA 14-day concurrence period.

(5) Before the commission approves a substitute measure, the substitute TCM(s) must have been subject to a public hearing and comment process conducted by the commission. The TCM substitution process parallels the rulemaking and SIP processes for the purpose of public participation; however, commission approval of a substitute TCM shall not constitute a SIP revision for the purpose of transportation conformity. There must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will be considered to be a minimum of 30 days prior to the hearing. The public notice shall include:

(A) prominent advertising in the affected area announcing the date, time, and place of the hearing; and

(B) availability of each proposed substitute TCM for public inspection in at least one location in the affected area.

(6) The public notice shall include a description of the substitute TCM and supporting analysis, including assumptions and methodology.

(7) Following the close of the public comment period, the commission shall respond to all comments received, and submit to EPA Region 6 a summary of comments received during the public comment period along with the commission responses to all comments. EPA shall notify the commission within 14 days of receipt of the summary of comments and responses if its concurrence with the substitute TCM has changed as a result of the public comments. If EPA fails to notify the commission within 14 days, EPA is deemed to concur.

(8) The TCM being replaced shall stay in effect until the substitute TCM has been approved. By approving a substitute TCM, the commission formally rescinds the previously applicable TCM.

(9) The commission shall maintain documentation of approved TCM substitutions. The documentation shall consist of a description of the substitute and replaced TCMs, including the requirements and schedules; a description of the substitution process, including a list of the committee or working group members; the public hearing and comment process; EPA concurrence; and commission approval. The documentation shall be submitted to EPA following the approval of the substitute measure by the commission and made available to the public as an attachment to the SIP.

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 May 8, 2000.

TRD-200003204
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 28, 2000
Proposal publication date: November 26, 1999
For further information, please call: (512) 239-0348

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 20. TEXAS WORKFORCE COMMISSION

Chapter 800. GENERAL ADMINISTRATION

Subchapter D. INCENTIVE AWARD RULES

40 TAC §§800.101, 800.102, 800.112 - 800.115, 800.118, 800.120

The Texas Workforce Commission (Commission) adopts §§800.101, 800.102, 800.112 - 800.115, 800.118, and 800.120, concerning the Workforce Investment Act (WIA) Incentive Awards. New §800.120 and amendments to §§800.101, 800.102, 800.113, 800.114 and 800.118 are adopted with changes to the text as published in the March 3, 2000, issue of the *Texas Register* (25 TexReg 1870). The amended §800.112 and §800.115 are adopted without changes and will not be republished.

The WIA principles are streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are limited and efficient state government, local control, personal responsibility, and support for strong families.

The purpose of these rules is to establish local workforce development board (Board) eligibility criteria for incentive awards reflective of WIA principles and the principles of Texas' vision as outlined in the Texas Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act for the Period of July 1, 1999 – June 30, 2004 – Transition Plan (State Plan). Specifically, the changes to the rules are for the following purposes: providing uniform uses of terms; updating the rules to reflect the WIA law, which replaced JTPA; replacing the definition for caseload reduction; adding definitions for exemplary performance, local coordination, regional cooperation, and workforce area; amending the definition of core outcome measures to include performance measures approved by the Legislative Budget Board; and using the term "active TANF cases" in the definition of caseload reduction to clarify that caseload reduction is evaluated based on the number of families who received Temporary Assistance for Needy Families (TANF) assistance during specific time periods. The definition for local coordination emphasizes the importance of Boards coordinating workforce services provided

by the Commission but not funded through the Boards, as well as workforce services funded by sources other than the Commission. The list of grants contained in the proposed definition provides examples of such programs and is not intended to be an exhaustive list of all possible programs. Section 800.113 is amended to clarify that five is the maximum number of non-monetary awards available each fiscal year.

As provided by WIA (29 U.S.C. §2801 *et seq.*) and the federal regulations (specifically 20 C.F.R. 665.300 *et seq.*), the State is responsible for oversight of WIA funds administered by the Boards and, as appropriate, awarding incentive awards for outstanding performance by the Boards. The State has developed §800.120, the WIA incentive awards policy, to meet these statutory and regulatory requirements. A provision is included in § 800.120 which provides that in determining eligibility for an incentive award, the Commission may consider whether a Board reached a specified minimum expenditure level during the previous program year. It is anticipated that a similar provision will be added to the eligibility requirements for all awards of state reserve WIA funds.

The Commission received public comments on the rules from one Board, the West Central Workforce Development Board. The commenter supported the rules and requested clarifications on some aspects of the rules. The Commission has explained the non-substantive changes to the proposed text in its responses to the comments that follow and incorporated additional non-substantive changes for purposes of clarity.

Comment: The commenter stated that overall, the proposed rules offer an exciting and new approach to incentives that should encourage workforce areas to strive for high performance and continuous improvement. The commenter supported the approach of recognizing a limited number of Boards with monetary and non-monetary awards and appreciated the flexibility of the eligibility criteria.

Response: The Commission agrees with the commenter and believes that competition among Boards and recognition of Boards that excel are effective methods of improving workforce training and services in Texas.

Comment: Regarding §800.114(b), Monetary Incentive Awards, the commenter stated that the last sentence indicates that "up to" five top performing Boards will receive monetary incentives; however, §800.118 states that "The monetary Incentive Award Pool will be awarded "to" the top five Boards . . .". The commenter requested clarification on whether monetary awards will be made to five Boards or up to five Boards.

Response: Both §§800.114 and 800.118 (adopted by the Commission to be effective April 1, 1998) address monetary incentive awards funded with incentive award pool monies, which are different from the WIA local incentive awards available from WIA funds. The Commission proposed the amendments to §§800.114 and 800.118 to provide uniform use of terms and not to make substantive changes to either rule. However, to clarify that the Commission intends that monetary incentive awards be awarded to the five top performing Boards, §800.118 is modified to state that the criteria for awarding monetary incentives are contained in § 800.114. The Commission will propose the repeal of § 800.118 in the future.

Comment: Regarding §800.118, Distribution of Incentive Awards, the commenter stated that this section describes the process of distribution for monetary awards, but does not provide a description of distribution for non-monetary awards. The commenter recommended that a description of the non-monetary award process be provided here or a statement be provided as to who, how and when that process will be determined.

Response: The Commission proposed the amendments to §800.118 (adopted by the Commission to be effective April 1, 1998) to provide uniform use of terms, and not to make substantive changes to the rule. However, to clarify the point raised by the commenter, the Commission refers the commenter to §800.113 (adopted effective April 1, 1998), which provides a description of the non-monetary award eligibility determination and award distribution process. Since the information requested is currently provided in §800.113, the Commission does not see a need to repeat the information in §800.118. Changes to §800.113 are added to clarify the non-monetary award process.

Comment: Regarding §800.120(b)(2)(F), the commenter stated that the language suggests that a Board's performance will be compared to other Boards. In both (A) and (D) of this same section, the wording used is "relative to" rather than "compared with." The commenter recommended for consistency that the terminology "relative to" be used or that clarification be provided regarding the terminology "compared with." The commenter also stated that the phrase "compared with" seems to imply that a Board with better performance would be viewed more favorably, despite local economic conditions, populations served, etc.

Response: The Commission agrees with clarifying the language in the rule. The proposed rule language will be modified to delete the phrase "compared with" and insert the phrase "relative to" to clarify the Commission's intent that it may consider a variety of factors in determining the amount of funds awarded to an eligible Board, including an eligible Board's performance for each contract measure relative to other Boards' performances as well as "changes in economic condition, population characteristics, and service delivery system in the workforce area" as stated in §800.120(b)(2)(E).

Comment: Regarding §800.120(b)(2)(G), the commenter requested clarification on the language "those areas considered most critical" by providing information on who will make this determination and what criteria may be used. The commenter stated that the provision appears to allow significant flexibility, which the commenter applauds, but could prove to be difficult to define and defend, if challenged.

Response: Section 800.120(b)(2) sets forth that the Commission will determine annually the total amount of funds to be allocated for WIA local incentive awards, taking into consideration a variety of factors that are identified by the Commission. The "areas" that the Commission considers most critical in accomplishing overall system goals include performance related to the items in §800.120(b)(1)(A)-(C). A Board must meet one or more of the three exemplary performance indicators to be considered for a WIA local incentive award. The Commission may further consider such factors as those set out in §800.120(b)(2)(A)-(J) in determining the amount of funds awarded to a Board meeting one or more of the exemplary performance indicators. The Commission agrees to clarify the language in §800.120(b)(2)(G) to change "those areas" to "the elements," and to insert at the end of the proposed language the following: ", which includes performance related to each of the items listed in §800.120(b)(1)(A)-(C)." For further clarifi-

cation, the phrase "for exemplary performance" and the word "areas" are deleted in §800.120(b)(1).

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

§800.101. Scope and Purpose.

(a) The purpose of the incentive is to reward Local Workforce Development Boards (Boards) that meet the stated goals of the Commission to increase the local control of workforce development programs and to put Texans to work. The Board is responsible for providing strategic planning for the workforce area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards for achieving high performance as a system, as well as high performance on behalf of the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, continuous improvement and support the State in achieving workforce development goals.

(b) State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the *Texas Register* on an annual basis and in a numbered Commission Letter.

§800.102. Definitions.

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

(1) Caseload Reduction – The caseload reduction measure is calculated by first determining the annual monthly average number of active Temporary Assistance for Needy Families (TANF) cases for each county in a workforce area for each of two consecutive years. The annual monthly average number of active TANF cases for each county within the workforce area are averaged to determine the annual monthly average TANF caseload for each Board. This procedure is then repeated for the second year. This results in an annual monthly average number of active TANF cases for each Board for each year. Finally, the percentage of change between the two annual monthly averages is calculated by subtracting year two from year one, dividing the difference by year one, and then multiplying the result by 100. This caseload reduction method does not mirror that promulgated by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, in calculating the State's caseload reduction factor used to determine the State's federally required participation rate.

(2) Core Outcome Measures – Workforce Development Program performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC), or as otherwise approved by the Legislative Budget Board. TCWEC Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(3) Earnings Gains Measure – The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

(4) Employment Measure – The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

(5) Exemplary Performance – Achievement by a Board on WIA performance measures in meeting one or more of the following criteria:

(A) exceeding contract performance measures;

(B) exceeding Commission-designated Full Service Texas Workforce Center certification standards;

(C) implementing an innovative and successful system integration as identified in a One-Stop Innovation Plan; or

(D) demonstrating exemplary performance through other means as determined by the Commission.

(6) High Performance Achievement – The top five Boards as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in §800.115 of this title (relating to Incentive Policy Adjustment Model).

(7) Incentive Award Pool – Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward Boards for high performance achievement.

(8) Local Coordination – Boards providing leadership to ensure cooperation to achieve the most effective customer service results for its population through one or more of the following:

(A) Memorandums of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memorandums of Understanding with partners required by WIA §121(b)(1) but not required by 40 TAC §801.27(b) that include active implementation and integration of related services;

(C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, including, but not limited to, demonstrating coordination with demonstration grants, Welfare-to-Work competitive grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(9) Local Workforce Development Boards – A Board that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas, and is operating multiple workforce development programs through an executed contract with the Commission.

(10) Regional Cooperation – Boards working together as a cooperative unit to provide excellence in customer service as a region through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(11) Skill Attainment Measure – The annual measure specified by the Commission based upon the percentage of individuals

who completed skill attainment activities and acquired a skill as recognized by the State or an industry in the form of an achievement as specified below:

(A) Board certification of youth and adult competency levels set in consultation with area employers and, where appropriate, educational agencies, labor organizations and community-based organizations based on such factors as entry level skills and other hiring requirements;

(B) a high school diploma;

(C) GED certificate;

(D) postsecondary education degree;

(E) occupational license;

(F) occupational certification; or

(G) other certifications recognized by the State.

(12) Workforce area – Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(13) Workforce Development Programs – Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§800.113. Non-Monetary Incentive Awards.

(a) Non-monetary awards for high performance achievement and continuous improvement in meeting performance measures may include, but are not limited to, plaques, certificates of achievement, or other formalized recognition accolades.

(b) To be eligible for a non-monetary incentive award, a certified Board must be one of the five outstanding Boards in the state and must have demonstrated exceptional performance in one of the four specified core outcome measures, unless otherwise approved by the Commission.

(c) Non-monetary incentive awards will be awarded annually based on performance beginning in Fiscal Year 1998, which commenced September 1, 1997.

(d) A Board may be recognized as an outstanding performer under more than one measure.

§800.114. Monetary Incentive Awards.

(a) Amounts from the Incentive Award Pool may be distributed to Boards based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.

(b) A targeted population will be annually identified by the Commission in the budget process. The first three measures set out in §800.112 of this title (relating to Criteria for Award) will be applied to this targeted population, while the fourth measure will be applied as written. The Commission shall award monetary incentives to a maximum of five outstanding Boards based on high performance in meeting or exceeding these four measures.

(c) Amounts from the Incentive Award Pool may be awarded annually based on performance beginning in Fiscal Year 1999, commencing September 1, 1998.

§800.118. Distribution of Incentive Awards.

The criteria for distributing monetary incentive awards are set forth in §800.114 of this title.

§800.120. WIA Local Incentive Awards.

(a) Allocation of Funding. The Commission shall determine annually the total amount of funds to be allocated from funds available through WIA §128(a) and §133(a)(1) for local incentive awards, taking into consideration availability of funds, number of workforce areas eligible for local incentive awards funds, and other factors as identified by the Commission.

(b) Eligibility Criteria for WIA Local Incentive Awards.

(1) A Board may be considered for a local incentive award in one or more of the following:

(A) regional cooperation among workforce areas;

(B) local coordination of activities carried out under WIA; and

(C) exemplary performance on local performance measures established by the Commission.

(2) In determining the amount of funds awarded to a Board, the Commission may consider such factors as:

(A) the amount of formula WIA funds allocated to the eligible Board relative to the formula allocations to the other Boards;

(B) for awards made during PY 2000, whether the Board can demonstrate that on July 1 it had expended 60 percent of the prior year WIA allocated funds;

(C) for awards made during PY 2001 and succeeding program years, whether the Board can demonstrate that it has met all expenditure requirements for eligibility for awards from State activity funds found in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding);

(D) performance improvement relative to the previous year;

(E) changes in economic conditions, population characteristics, and service delivery system in the workforce area;

(F) the eligible Board's performance for each contract performance measure relative to other Boards;

(G) performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §800.120(b)(1)(A)-(C);

(H) monitoring reports and resolution activities;

(I) achievement of goals outlined in a One-Stop Innovation Plan; and

(J) additional criteria consistent with implementation of WIA.

(c) Application for WIA Local Incentive Awards.

(1) Only those Boards submitting a written application shall be considered for local incentive awards.

(2) The Commission shall issue instructions annually which shall include the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for local incentive awards.

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 May 4, 2000.

TRD-200003144

J. Randel (Jerry) Hill

General Counsel
Texas Workforce Commission
Effective date: May 24, 2000
Proposal publication date: March 3, 2000
For further information, please call: (512) 463-8812

♦ ♦ ♦

Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

Subchapter B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §§801.21 - 801.29

The Texas Workforce Commission (Commission) adopts new §§801.21-801.29 relating to the One-Stop Service Delivery Network. Sections 801.21, 801.25 and 801.27-809.29 are adopted with changes to the proposed text as published in the January 21, 2000, issue of the *Texas Register*(25 TexReg 368). Sections 801.22-801.24 and 801.26 are adopted without changes and will not be republished.

The Texas Workforce Commission (Commission) adopts the repeal of §§841.11-841.13 and new §841.11, relating to the One-Stop Service Delivery Network, without changes to the proposed text as published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 372).

The adopted rules set forth the One-Stop Service Delivery Network, developed by the Commission in partnership with the local workforce development boards (Boards), and emphasize the partnership between the Commission and the Boards in assuring compliance with Texas Government Code, Chapter 2308.

Background and Purpose: The purpose of the rules is to facilitate the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302. The adopted rules provide a framework that is reflective of the Workforce Investment Act, 29 U.S.C.A. §2801 *et seq*., (WIA) one-stop principles and the principles of Texas' vision as presented in the WIA State Plan. The WIA principles are: streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families.

The system outlined herein emphasizes the partnership between the Boards and the Commission in providing a seamless network of information and services that is responsive to the individual needs of customers. The adopted rules identify Texas Workforce Center standards, required partners, and other entities that may be additional or voluntary partners in the One-Stop Delivery Network. The rules also provide support for innovation and excellence in performance and service delivery in coordination with the Commission's incentive rules.

The purpose of §801.21 is to set forth the scope and purpose of the rules contained in the subchapter.

The purpose of §801.22 is to set forth the requirement to maintain a One-Stop Service Delivery Network.

The purpose of §801.23 is to set forth the definitions applicable to the One-Stop Service Delivery Network.

The purpose of §801.24 is to set forth the different levels of certification for Texas Workforce Centers.

The purpose of §801.25 is to set forth the standards applicable to the certification of Texas Workforce Centers.

The purpose of §801.26 is to set forth the provisions relating to One-Stop Innovation Plans.

The purpose of §801.27 is to set forth the provisions relating to the Texas Workforce Center Partners.

The purpose of §801.28 is to set forth the services available through the One-Stop Service Delivery Network.

The purpose of §801.29 is to set forth the limitations on delivery of services.

New Chapter 801, Subchapter B, is added as the location for rules regarding the One-Stop Service Delivery Network.

The Commission received public comments from the West Central Workforce Development Board, the Texas Commission for the Blind and the Texas Rehabilitation Commission. One commenter requested clarification and suggested several changes to the rule. Two of the commenters generally agreed with the rules and stated they were well written but suggested one change. Changes to the rules are for the purposes described in the responses or for the purpose of clarification.

Comment: Regarding §801.25(a)(6) one commenter recommended deletion of the word "written" as it relates to the required provision of information by a Certified Texas Workforce Center because persons receiving the information may wish to view the information on a computer screen rather than from a printed hard copy.

Response: The Commission asserts that the proposed subsection complies with Texas Government Code §2308.313 that requires the provision of a "document" with the required information. An individual could elect to view the information electronically rather than a printed hard copy version of the information. Therefore, the Commission does not believe that deleting the word "written" is appropriate.

Comment: Regarding §801.25(a)(11) one commenter requested clarification regarding the requirement that "information packages" be available to customers because the commenter felt that the requirement seemed to conflict with a customer-friendly and flexible approach that would emphasize providing only that information that is needed or wanted by the customer. The commenter recommended rewording the requirement to read: "prepare and provide access to information for customers that describe services..."

Response: The Commission agrees that the purpose of the requirement is to ensure a customer-friendly and flexible approach by providing customers with information sufficient to make informed consumer choices on those services and programs they may wish to access or for which they may request more detailed information. However, customers may not know what information they want or need until they see what information is available. The Commission does not intend that the information packets provide detailed explanations of the required information or that all customers be given information packages whether they want them or not. Therefore, the Commission will amend the subsection to require that the information packages be pre-

pared and available, and that they briefly describe the required information.

Comment: Regarding §801.25(b)(3) one commenter recommended replacing "resume preparation stations" with "resume preparation software" to eliminate the implication that personal computers would be designated exclusively as resume preparation stations, thus requiring customers to use other computers to access the Internet and job matching systems.

Response: The Commission agrees with the commenter and will amend the subsection to require customer access to resume preparation tools, including software.

Comment: Regarding §801.25(b)(5) one commenter recommended that the menu of services with corresponding fee schedule be "available upon request" rather than displayed to eliminate customer assumptions that fees are associated with certain services, regardless of the customer's eligibility status.

Response: The Commission asserts that in order to make informed consumer decisions, customers need to know what, if any, fees are associated with specific services. The Commission asserts that the fee schedules should be visible to the public rather than "available upon request" in order to relieve the customer of the burden of having to request the information. For that reason, the Commission declines to amend the rule language as proposed. The Commission states that Texas Workforce Center operators could eliminate confusion by adding a caveat to the menu that the fees are dependent upon eligibility status.

Comment: Regarding §801.25(b)(6) one commenter recommended either deleting the phrase "direct supervision of all personnel" or replacing it with "on-site management of all personnel" to ensure that center operators at sites not managed by the Commission's staff are not in conflict with the Master Contract Part G Section 3.3 that requires the Commission's supervision of the Commission's employees, whether on-site or not.

Response: The Commission agrees with the commenter. The Commission's intent is to ensure effective and efficient management of workforce centers and will amend the rule to provide for on-site management, rather than supervision, of the Commission's staff by Texas Workforce Center operators.

Comment: Regarding §801.27(a) one commenter recommended deleting the provision because it is not appropriate or reasonable to require Chief Elected Officials (CEOs) to enter into Memorandums of Understanding (MOUs) with required partners in their areas. The commenter further asserted that the role of the CEO is a local decision typically addressed in the Partnership Agreement. The commenter also recommended deletion of the requirement that CEOs agree on a voluntary partner's participation because the involvement of CEOs in the process of selecting or agreeing on the inclusion of other entities and voluntary partners in the one-stop network is a local decision.

Response: The Commission agrees and clarifies that the rule as proposed requires only that CEOs agree that the Board should enter into MOUs with workforce center partners, not that CEOs sign the agreements themselves. To clarify the provision , the rule is amended to state that each Board shall obtain a general authorization from the CEOs for actions taken under the subsection. Therefore, the Commission does not believe that deleting this section is appropriate.

Comment: Regarding §801.28(a)(3) one commenter interpreted the provision to indicate that eligibility determinations for all partner programs must be provided as a core service, and suggested that this creates significant liability to workforce center operators when partner staff are not available on site to conduct eligibility determinations on their own programs.

Response: The WIA at § 121 (b)(1)(A)(i) (29 U.S.C.A. §2841) states that each required one-stop partner shall make core services applicable to its program available through the workforce center. Section 134(d)(2) (29 U.S.C.A. §2864) requires that partners assist individuals with applying for and establishing eligibility. The Commission agrees to clarify the language of the rule to state expressly that all certified Texas Workforce Centers shall provide core services that include determinations of whether individuals are eligible "for programs funded through the Commission that are available" through the One-Stop Service Delivery Network.

Comment: Regarding §801.28(a)(6) two commenters recommended deleting the requirement that voluntary workforce center partners submit performance and program cost information to the Commission on eligible providers of various services, including the vocational rehabilitation program activities. The two commenters asserted that providers of these services will report performance and cost information to the Rehabilitation Services Administration and the Texas Council on Workforce and Economic Competitiveness, and not the Texas Workforce Centers.

Response: The WIA at § 134 (d)(2)(F) (29 U.S.C.A. §2864) requires the submission of performance and program cost information on all eligible providers of training services as described in Section 122. If either the Texas Rehabilitation Commission (TRC) or the Texas Commission on the Blind (TBC) or contractors of TRC or TBC submitted a training program for certification under WIA §122 (29 U.S.C.A. §2842), the submitting entity would be required to provide performance and cost information. If training programs funded through TRC or TBC are not submitted for certification, performance and cost information is not required. Participation in the center and the provision of core services from the center does not in and of itself require the submission of performance and cost information on training programs. The Commission does not believe that deleting this requirement is appropriate.

Comment: Regarding §801.28(a)(11) one commenter suggested that language in subsection 801.28(a)(11) indicated that the workforce center operator should assist in determining eligibility for Choices and Food Stamp Employment and Training benefits, which is solely a Texas Department of Human Services (TDHS) responsibility. The commenter stated that if the Commission intended to ensure that potentially eligible individuals are referred to TDHS for service, then rewording the subsection for clarity was recommended.

Response: The Commission agrees that TDHS is the agency responsible for determining whether or not an individual is eligible for Temporary Assistance for Needy Families (TANF) and Food Stamp benefits. The TDHS also determines whether the clients are required to participate in the Choices or Food Stamp Employment and Training activities. As a result of TDHS's determination, the mandatory participants are referred to the appropriate Board's Texas Workforce Center for participation in allowable activities. A Texas Workforce Center's caseworker does an assessment regarding the individual's ability to work consistent

with the work first principles. If the individual is not work ready, the caseworker performs an assessment and assists the individual with identifying applicable training and choosing among options to assist the individual with participating in a work or work enhancing activity. The proposed rule does not indicate to the contrary, nor does the Commission require that the one-stop center partners assist individuals with applying for TANF and Food Stamp benefits or determine eligibility for Choices or Food Stamp Employment and Training activities. The one-stop center partners' role includes providing access to information on program requirements, referral to the appropriate partner staff who will determine whether or not participation is required, and assistance in collecting and providing required information. The Commission does not agree that changes to paragraph (11) are necessary but directs the commenter to the clarification in §801.28(a)(3).

The new rules are adopted under Texas Labor Code, §§301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§801.21. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the rules relating to the One-Stop Service Delivery Network as set forth in Texas Government Code, Chapter 2308, Texas Labor Code, Chapters 301 and 302, and Workforce Investment Act (WIA) § 121 (29 U.S.C.A. §2841). It is the intent of the Commission, in partnership with Boards, to facilitate the development and maintenance of the One-Stop Service Delivery Network such that information and services responsive to their individual needs are available to all customers. The One-Stop Service Delivery Network shall be evaluated against the established levels of certification as well as any additional standards developed by the Commission to ensure the continuous improvement of the system.

(b) The rules contained in this Subchapter B, relating to the One-Stop Delivery System, shall apply, except that to the extent of any conflict, the provisions of Texas Government Code, Chapter 2803 and Section 801.2 of this Chapter 801, relating to Local Workforce Development Boards, shall govern.

§801.25. Texas Workforce Center Standards.

(a) Basic Workforce Center Standards. The Commission has established basic standards that must be met by all Texas Workforce Centers. Certified Texas Workforce Centers shall:

(1) be available to employers, students and workers throughout the local workforce development area;

(2) provide access to information and services, including employment services;

(3) address individual needs of customers by providing processes for the following three methods of accessing services: self-service, basic access, and full access;

(4) provide services that are tailored to meet individual needs and include: labor market information, a common intake and eligibility determination process, an independent assessment and service strategy, centralized and continuous case management and counseling, access to Individual Training Account (ITA) services for education and training needs, supportive services (including access to subsidized child care), student loans, and other forms of financial assistance required to participate in and complete training;

(5) not provide developmental services, such as General Educational Development (GED), English as a Second Language (ESL), or Adult Basic Education (ABE);

(6) provide each person with written information on local demand occupations, projected wage level upon completion of training programs, and performance of training providers when requested;

(7) implement a process for initial contact that is customer-driven and flexible;

(8) ensure access throughout the workforce development area by developing electronic methods for service delivery, such as kiosk, Internet, and wide area network (WAN);

(9) ensure staff are experienced and knowledgeable in all required programs and services for job seekers and for employers;

(10) implement a tiered customer-driven service delivery strategy that includes: information through individual self-service, job search assistance in group settings, access to information on filing a claim for unemployment insurance benefits, and specialized, intensive staff-assisted services;

(11) prepare and make available understandable information packages for customers that briefly describe services, locations, self-service options, job openings, career exploration methods, labor market information, training opportunities, educational opportunities, and consumer information, and that also provide a mechanism for customer feedback on services provided;

(12) implement a timely and efficient referral and follow up process for employment-related services;

(13) provide independent assessment of individual needs that includes assessment of literacy levels for Choices clients who have not recently received a literacy level assessment;

(14) maintain a user-friendly resource center that makes available computerized information systems with access to labor market information, demographics, occupations, and educational opportunities;

(15) make available core services, as defined in §801.28, of the following programs: Title I of WIA serving adults, dislocated workers and youth; Food Stamp Employment and Training; TANF Choices activities; access to subsidized Child Care Services; Wagner-Peyser Employment Services; Trade Adjustment Assistance; veterans' employment and training programs; adult education; National Literacy Act services; non-certificate postsecondary career and technology training; Senior Texans Employment Program; Apprenticeship Program; National Community Services Act Program; Project RIO for ex-offenders; and access to unemployment insurance benefits. Boards shall ensure that staff be available to provide the core services of these programs during all Texas Workforce Center operating hours;

(16) ensure availability through the Texas Workforce Centers of other services for the programs listed in subparagraph (15) of this section;

(17) provide reasonable accommodation and accessibility in accordance with the Americans with Disabilities Act (ADA); and

(18) meet each of the requirements for Certified Full Service Texas Workforce Centers within twelve months of certification as a Texas Workforce Center.

(b) Full Service Standards. The Commission has established specific standards for a Texas Workforce Center to receive full service

certification. A Certified Full Service Texas Workforce Center shall meet each of the following requirements within twelve months of certification as a Texas Workforce Center. Certified Full Service Texas Workforce Centers shall:

(1) design a customer-friendly waiting area and implement written procedures that define the measures taken to minimize customer wait time in the reception area and in other areas of the Texas Workforce Center;

(2) develop written procedures for following up on referrals to determine customer receipt of services, appropriateness of the referral to address the customer's needs and the extent of customer satisfaction with the referral process and service received;

(3) provide customer access to the statewide job matching system, resume preparation tools, including software, and the Internet;

(4) provide consumer information on the quality of education and training providers and include a mechanism for customer feedback on personal experience with such providers;

(5) develop and display a menu of services with a corresponding fee schedule for services available at the Certified Full Service Texas Workforce Center;

(6) demonstrate: on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, non-duplication of efforts, removal of redundancies within program activities, and maximum flexibility to optimize utilization of resources;

(7) provide basic labor exchange services, including access to job orders for applicants, access to applicants for employers, and screening and referral methods for matching appropriate applicants and job orders; and

(8) provide centralized case management activities for specialized populations, such as the welfare, veterans, dislocated workers and disabled populations.

§801.27. Texas Workforce Center Partners.

(a) Each Board shall maintain one or more memoranda of understanding that set out the obligations of the Board and each partner in the operation of the One-Stop Service Delivery Network in the local workforce development area. Each Board shall obtain a general authorization from the CEOs for actions taken under this subsection.

(b) Subject to the limitations as referenced in §801.29 of this Chapter, relating to Limitations on Delivery of Services, the required Texas Workforce Center Partners are the entities that administer the following in the local workforce development area:

(1) services authorized under Title I of WIA for adults, dislocated workers and youths;

(2) Food Stamp Employment and Training services;

(3) Temporary Assistance for Needy Families - Choices services;

(4) subsidized child care services;

(5) Welfare-to-Work block grant services;

(6) Wagner-Peyser employment services;

(7) Trade Adjustment Assistance and NAFTA/TAA services;

(8) veterans' employment services;

(9) adult education activities;

(10) National Literacy Act services;

(11) non-certificate postsecondary career and technology training;

(12) Senior Texans Employment Program (STEP) services;

(13) apprenticeship training;

(14) National and Community Services Act;

(15) Project RIO services for ex-offenders; and

(16) Unemployment Insurance.

(c) Other entities that provide services of benefit to workforce development, including federal, state, and local programs as well as programs in the private sector, may be voluntary partners in the One-Stop Service Delivery Network if the Board and chief elected official(s) agree on the entity's participation. These entities include, but are not limited to, those that provide:

(1) vocational rehabilitation program services (for example, Texas Rehabilitation Commission, Texas Commission for the Blind);

(2) migrant and seasonal farmworker employment services;

(3) secondary and postsecondary vocational education and training activities;

(4) community services block grant programs;

(5) employment and training services provided through grantees of the U. S. Department of Housing and Urban Development;

(6) Job Corps services for youth; and

(7) Native American programs.

§801.28. Services Available Through the One-Stop Service Delivery Network.

(a) Core Services. All Certified Texas Workforce Centers shall provide core services, as defined in WIA § 134(d)(2) (29 U.S.C.A. §2864 (d)(2)) and Texas Government Code, Chapter 2308, including:

(1) outreach;

(2) intake, which may include worker profiling, and orientation to the information and services available through the One-Stop Service Delivery Network;

(3) determinations of whether the individuals are eligible for programs funded through the Commission that are available through the One-Stop Service Delivery Network;

(4) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(5) job search and placement assistance and, where appropriate, career counseling;

(6) provision of performance information and program cost information on eligible providers of training services as described in §§ 841.31 - 841.47 of this chapter (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123 (29 U.S.C.A. §2843), providers of adult education described in Title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vo-

cational and Applied Technology Education Act (20 U.S.C.A. §2301 *et seq.*), and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 *et seq.*);

(7) provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop Service Delivery Network in the local area;

(8) provision of information regarding filing claims for unemployment compensation;

(9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information related to local occupations in demand and the earnings and skill requirements for such occupations;

(10) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local workforce development area, and referral to such services, as appropriate;

(11) assistance in establishing eligibility for Welfare-to-Work activities, Choices, Food Stamp Employment and Training, and programs of financial aid assistance for training and education that are available in the local area; and

(12) follow up services, including counseling regarding the work place, for participants in workforce investment activities authorized under Chapter 841 of this Title, relating to Workforce Investment Act, who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(b) Intensive Services. A One-Stop Service Delivery Network shall provide access to services as described in the Texas Government Code, Chapter 2308, and intensive services as described in the WIA §134(d)(3) (29 U.S.C.A. §2864(d)(3)), which may include the following:

(1) comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;

(2) development of an individual employment plan and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;

(3) group counseling;

(4) individual counseling and career planning;

(5) centralized and continuous case management; and

(6) short-term prevocational services, including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.

(c) Training Services. A One-Stop Service Delivery Network shall provide access to training services as described in WIA §134(d)(4) (29 U.S.C.A. 2864(d)(4)) and the Texas Government Code, Chapter 2308. Training services may include the following:

(1) occupational skills training, including training for nontraditional employment;

(2) on-the-job training;

(3) programs that combine work place training with related instruction;

(4) training programs operated by the private sector;

(5) skills upgrading and retraining;

(6) entrepreneurial training;

(7) job readiness training;

(8) adult education and literacy activities in combination with services with activities described in (1)-(7) of this section; and

(9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.

(d) Other Services and Activities. A One-Stop Service Delivery Network shall offer access to:

(1) all other permissible local employment and training activities included in the local workforce development plan, which may include discretionary one-stop activities, supportive services, and needs-related payments as outlined in WIA §134(e) (29 U.S.C.A. §2864(e));

(2) all programs and activities administered by the Texas Workforce Center Partners; and

(3) the information described in Wagner-Peyser Act, §15, and all job search, placement, recruitment and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C.A. 49 *et seq.*).

§801.29. Limitations on Delivery of Services.

Delivery of services under §801.28 of this Title, relating to Services Available Through the One-Stop Service Delivery Network, is subject to state law requirements on Board organization and service delivery structure as found in Texas Government Code, Chapter 2308, and Chapter 801 of this Title, relating to Local Workforce Development Boards, as well as eligibility requirements and limitations of individual programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2000.

TRD-200003175
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Effective date: May 25, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-8812

♦ ♦ ♦

Chapter 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (Commission) adopts the repeal of §§ 841.11-841.13 and new §841.11, relating to the One-Stop Service Delivery Network, without changes to the

proposed text as published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 372).

The adopted rules set forth the One-Stop Service Delivery Network developed by the Commission in partnership with the local workforce development boards (Boards) and emphasize the partnership between the Commission and the Boards in assuring compliance with Texas Government Code, Chapter 2308. Additional information on the repeal and new rule contained in this Chapter 841 may be found in the adoption notice of new and amended rules (§§801.21-801.29) published in this issue of the *Texas Register*. No comments were received on the repeal of §§841.11-841.13 and new §841.11.

Subchapter B. ONE-STOP DELIVERY SYSTEM

40 TAC §§841.11 - 841.13

The repeals are adopted under Texas Labor Code, §§301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2000.

TRD-200003177
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Effective date: May 25, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-8812

♦ ♦ ♦

Subchapter B. ONE STOP SERVICE DELIVERY NETWORK

40 TAC §841.11

The new rule is adopted under Texas Labor Code, §§301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2000.

TRD-200003176
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Effective date: May 25, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-8812

♦ ♦ ♦

TITLE 43. TRANSPORTATION

Part 5. HARRIS COUNTY TAX ASSESSOR-COLLECTOR

Chapter 95. REGULATION OF MOTOR VEHICLE TITLE SERVICES

43 TAC §95.1

The Harris County Tax Assessor-Collector's Office adopts new §95.1, concerning the regulation of motor vehicle title services, without changes to the proposed text as published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9821).

The new rule will regulate motor vehicle title services. Prior to the 76th Legislature, motor vehicle title services were unregulated, unlicensed, and were not required to maintain records. Such third-party title services have been linked to vehicle insurance fraud and car theft.

The implementation of this new rule will allow the Harris County Tax Office to regulate and license vehicle title service companies according to HB3521. This rule serves to minimize criminal activity in the vehicle title service industry.

Three comments were received regarding the adoption of this new rule.

Vehicle title service owners were concerned about having their Texas driver's license number posted on the Harris County Tax Assessor-Collector website. An alternate control number has been assigned.

Another commenter suggested in writing we amend § 95.1 to restate the exemptions set forth in section 520.063 of HB3521. Upon review, we felt it was not necessary to restate the law in the rules.

The last commenter suggested minor language changes to the proposed text which does not change any intent of this section. These changes will be considered for future amendments to this section.

The new rule is adopted under HB3521 which provides the Tax Assessor-Collector's Office with authority to adopt 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 May 2, 2000.

TRD-200003087
Jack Burton
Chief of Staff
Harris County Tax Assessor-Collector
Effective date: May 22, 2000
Proposal publication date: November 5, 1999
For further information, please call: (713) 755-5288

♦ ♦ ♦

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 on Aging

Title 40, Part 9

The Texas Department on Aging will review and consider for readoption, revision or repeal Title 40, Texas Administrative Code, Part 9, Chapter 270. General Service Requirements, §270.1 General Service Requirements; §270.2. Services Definitons; §270.3. Transportation Service Requirements for the Elderly; §270.7. Homemaker Service Requirements; §270.9. Personal Assistance Service Requirements; §270.13. Adult Day Care Service Requirements; and §270.15. Emergency Response Service Requirements.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §§9-10.13, 76th Legislature, 1999.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Frank Pennington, Director, Texas Department on Aging, 4900 North Lamar, Austin, Texas 78751. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the Department.

TRD-200003191
Gary Jessee
Program Specialist
Texas Department on Aging
Filed: May 5, 2000

♦ ♦ ♦

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 17, concerning Marketing and Promotion Division, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9-10.13 and §2001.039 require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Title 4, §§17.51, 17.304, 17.306, and 17.308, and the repeal of §17.200. These may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Title 4, Chapter 17, by the department at this time indicates that with the exception of sections proposed for amendment or repeal, the reason for adopting or readopting without changes all remaining sections in Chapter 17 continues to exist.

The department is accepting comment on the review of Chapter 17. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to Dolores Alvarado Hibbs, Deputy General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200003214
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 8, 2000

♦ ♦ ♦

Texas Department of Agriculture-Texas Agricultural Finance Authority

Title 4, Part 1

The Texas Agricultural Finance Authority (Authority) of the Texas Department of Agriculture proposes to review Title 4, Texas Administrative Code, Part I, Chapter 24 concerning the Authority's Farm and Ranch Finance Program, Chapter 26 concerning the Authority's Linked Deposit Program, Chapter 28 concerning the Authority's Financial Assistance Program, Chapter 29 concerning the Texas Agricultural Diversification Program: Matching Grants, and Chapter 30

concerning the Authority's Young Farmer Loan Guarantee Program. This review is proposed pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (§ 9-10.13). Section 9-10-13 and § 2110.039 requires states agencies to review and consider for readoption each of their rules every four years. The review must included as assessment of whether the original justification for the rules continues to exist.

As part of the review process, the Authority proposes the repeal of Title 4, Part I, Chapter 29. The repeal of Chapter 29 may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Title 4, Part 1, Chapters 24, 26, 28, 29, and 30 by the Authority at this time indicates that with the exception of Chapter 29, which is proposed for repeal, the reason for adoption or readopting all remaining sections in these chapters continues to exist.

The Authority is accepting comment on the review of Chapters 24, 26, 28, 29, and 30. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to Robert Kennedy, Deputy Assistant Commissioner for Finance, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711.

TRD-200003171
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture-Texas Agricultural Finance Authority
Filed: May 5, 2000

♦ ♦ ♦

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 56. Family Planning, Subchapter A. Program Information, §§56.101 - 56.104; Subchapter B. Client Rights and Eligibility, §§56.201 - 56.209; Subchapter C. Provider Program Requirements, §§56.301 - 56.306; Subchapter D. Purchased Services, §§56.401 - 56.404; Subchapter E. Family Planning Agency Standards Titles V, X, XIX, and XX, §§56.501 - 56.525; Subchapter F. Administrative Requirements for Agency Providers, §§56.601 - 56.607; Subchapter G. Genetic Services, §§56.701 - 56.703; Subchapter H. Family Planning Program Services Provided by Texas Department of Health Direct Delivery Staff, Family Health Services Nurses, and Contracted Health Providers, §§56.801 - 56.802; and Subchapter I. Texas Department of Health Aids Prevention, §§56.901 - 56.904.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200003307
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 10, 2000

♦ ♦ ♦

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 169. Zoonosis Control, Subchapter A. Rabies Control and Eradication, §§169.21 - 169.34; Subchapter B. Care of Animals by Circuses, Carnivals, and Zoos, §§169.41 - 169.48; Subchapter C. Training of Animal Shelter Personnel, §§169.61 - 169.65; Subchapter D. Riding Stable Registration Program, §§169.81 - 169.89; and Subchapter E. Dog and Cat Sterilization, §169.101.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200003308
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 10, 2000

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission proposes to review the following sections of Chapter 535 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, §167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist. Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas, 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.205. Inspectors Licensed Under Prior Law.

§535.206. The Texas Real Estate Inspector Committee.

§535.208. Application for a License.

§535.210. Fees.

§535.212. Education and Experience Requirements for a License.

§535.213. Schools and Courses of Study in Real Estate Inspection.

§535.214. Examinations.

§535.215. Inactive Inspector Status.

§535.216. Renewal of License or Registration.

§535.218. Continuing Education.

§535.220. Professional Conduct and Ethics.

§535.221. Advertisements.

§535.223. Standard Inspection Reports.

§535.224. Proceedings before the Committee.

§535.226. Sponsorship of Apprentices Inspectors and Real Estate Inspectors.

TRD-200003251
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: May 9, 2000

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Economic Development

Title 10, Part 5

The Texas Department of Economic Development (department) adopts the review of *Chapter 162*, related to the Texas Exporters Loan Fund pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review is adopted without changes as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1401).

Agency review of this rule has found that the reason for the rule has ceased to exist. As part of the review process the department is adopting the repeal of Chapter 162 in its entirety. The adopted repeal may be found in the Adopted Rules section in this issue of the *Texas Register*.

No comments were received regarding the rule review requirement as to whether the reason for adopting the rules continues to exist.

This concludes the review process for 10 TAC Chapter 162.

TRD-200003196
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: May 5, 2000

♦ ♦ ♦

The Texas Department of Economic Development (department) has completed the review of *Chapter 185*, concerning Rules for Texas Small Business Industrial Development Corporation Revenue Bond Programs, as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2405). The department readopts Chapter 185 and finds that the reason for the rules continues to exist.

The department received no comments on the review of this chapter.

As part of this review process the department is adopting amendments to §§185.2 - 185.4. The amendments were published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2238). The adoption of the amendments may be found in the Adopted Rules section in this issue of the *Texas Register*.

This concludes the review process for 10 TAC Chapter 185 in its entirety.

TRD-200003197
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: May 5, 2000

♦ ♦ ♦

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission), pursuant to Texas Government Code, §2001.039, readopts §3.1, relating to Organization Report; Retention of Records; Notice Requirements, and §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports. The notice of review was published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 2165). The Commission received no comments regarding the proposed rule review. After review, the Commission readopts these sections, as amended.

The Commission has determined that the reasons for adopting these rules, with the adopted amendments, continue to exist.

TRD-200003138
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: May 4, 2000

♦ ♦ ♦

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.

Figure: 30 TAC §290.275(1)

Appendix A-Converting MCL Compliance Values for

Consumer Confidence Reports

Key

AL=Action Level
MCL=Maximum Contaminant Level
MCLG=Maximum Contaminant Level Goal
MFL=million fibers per liter
mrem/year=millirems per year (a measure of radiation absorbed by the body)
NTU=Nephelometric Turbidity Units
pCi/l=picocuries per liter (a measure of radioactivity)
ppm=parts per million, or milligrams per liter (mg/l)
ppb=parts per billion, or micrograms per liter (<greek-m>g/l)
ppt=parts per trillion, or nanograms per liter
ppq=parts per quadrillion, or picograms per liter
TT=Treatment Technique

Contaminant	***MCL in compliance units (mg/L)***	multiply by	MCL in CCR units	***MCLG in CCR units***
Microbiological Contaminants				
1. Total Coliform Bacteria			Presence of coliform bacteria in <gr-thn-eq>5% of monthly samples.	0
2. Fecal coliform and E. coli			A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive.	0
3. Turbidity			TT (NTU)	n/a
Radioactive Contaminants				
4. Beta/photon emitters	4 mrem/yr		4 mrem/yr	0
5. Alpha emitters	15 pCi/l		15 pCi/l	0
6. Combined radium	5 pCi/l		5 pCi/l	0
Inorganic Contaminants				

7. Antimony	.006	1000	6 ppb	6
8. Arsenic	.05	1000	50 ppb	n/a
9. Asbestos	7 MFL		7 MFL	7
10. Barium	2		2 ppm	2
11. Beryllium	.004	1000	4 ppb	4
12. Cadmium	.005	1000	5 ppb	5
13. Chromium	.1	1000	100 ppb	100
14. Copper	AL=1.3		AL=1.3 ppm.	1.3
15. Cyanide	.2	1000	200 ppb	200
16. Fluoride	4		4 ppm	4
17. Lead	AL=.015	1000	AL=15 ppb	0
18. Mercury (inorganic)	.002	1000	2 ppb	2
19. Nitrate (as Nitrogen)	10		10 ppm	10
20. Nitrite (as Nitrogen)	1		1 ppm	1
21. Selenium	.05	1000	50 ppb	50
22. Thallium	.002	1000	2 ppb	0.5
Synthetic Organic Contaminants **including Pesticides and** **Herbicides**	.07	1000	70 ppb	70
23. 2,4-D				
24. 2,4,5-TP {Silvex}	.05	1000	50 ppb	50
25. Acrylamide			TT	0
26. Alachlor	.002	1000	2 ppb	0
27. Atrazine	.003	1000	3 ppb	3
28. Benzo(a)pyrene {PAH}	.0002	1,000,000	200 ppt	0
29. Carbofuran	.04	1000	40 ppb	40
30. Chlordane	.002	1000	2 ppb	0
31. Dalapon	.2	1000	200 ppb	200
32. Di(2-ethylhexyl)adipate	.4	1000	400 ppb	400
33. Di(2-ethylhexyl) phthalat	.006	1000	6 ppb	0
34. Dibromochloropropane	.0002	1,000,000	200 ppt	0
35. Dinoseb	.007	1000	7 ppb	7
36. Diquat	.02	1000	20 ppb	20

38. Endothall	.1	1000	100 ppb	100
39. Endrin	.002	1000	2 ppb	2
40. Epichlorohydrin			TT	0
41. Ethylene dibromide	.00005	1,000,000	50 ppt	0
42. Glyphosate	.7	1000	700 ppb	700
43. Heptachlor	.0004	1,000,000	400 ppt	0
44. Heptachlor epoxide	.0002	1,000,000	200 ppt	0
45. Hexachlorobenzene	.001	1000	1 ppb	0
46. Hexachloro-cyclopentadiene	.05	1000	50 ppb	50
47. Lindane	.0002	1,000,000	200 ppt	200
48. Methoxychlor	.04	1000	40 ppb	40
49. Oxamyl {Vydate}	.2	1000	200 ppb	200
50. PCBs {Polychlorinated biphenyls}	.0005	1,000,000	500 ppt	0
51. Pentachlorophenol	.001	1000	1 ppb	0
52. Picloram	.5	1000	500 ppb	500
53. Simazine	.004	1000	4 ppb	4
54. Toxaphene	.003	1000	3 ppb	0
Volatile Organic Contaminants				
55. Benzene	.005	1000	5 ppb	0
56. Carbon tetrachloride	.005	1000	5 ppb	0
57. Chlorobenzene	.1	1000	100 ppb	100
58. o-Dichlorobenzene	.6	1000	600 ppb	600
59. p-Dichlorobenzene	.075	1000	75 ppb	75
60. 1,2-Dichloroethane	.005	1000	5 ppb	0
61. 1,1-Dichloroethylene	.007	1000	7 ppb	7
62. cis-1,2-Dichloroethylene	.07	1000	70 ppb	70
63. trans-1,2-Dichloroethylene	.1	1000	100 ppb	100
64. Dichloromethane	.005	1000	5 ppb	0
65. 1,2-Dichloropropane	.005	1000	5 ppb	0
66. Ethylbenzene	.7	1000	700 ppb	700
67. Styrene	.1	1000	100 ppb	100
68. Tetrachloroethylene	.005	1000	5 ppb	0

69. 1,2,4-Trichlorobenzene	.07	1000	70 ppb	70
70. 1,1,1-Trichloroethane	.2	1000	200 ppb	200
71. 1,1,2-Trichloroethane	.005	1000	5 ppb	3
72. Trichloroethylene	.005	1000	5 ppb	0
73. TTHMs {Total trihalomethanes}	.10	1000	100 ppb	0
74. Toluene	1		1 ppm	1
75. Vinyl Chloride	.002	1000	2 ppb	0
76. Xylenes	10		10 ppm	10

Figure: 30 TAC §290.275(2)

Appendix B- Sources of Regulated Contaminants

Key

AL=Action Level
MCL=Maximum Contaminant Level
MCLG=Maximum Contaminant Level Goal
MFL=million fibers per liter
mrem/year=millirems per year (a measure of radiation absorbed by the body) NTU=Nephelometric Turbidity Units
pCi/l=picocuries per liter (a measure of radioactivity)
ppm=parts per million, or milligrams per liter (mg/l)
ppb=parts per billion, or micrograms per liter (<greek-m>g/l)
ppt=parts per trillion, or nanograms per liter
ppq=parts per quadrillion, or picograms per liter
TT=Treatment Technique

Contaminant (units)	MCLG	MCL	Major sources in drinking water
Microbiological Contaminants			
1. Total Coliform Bacteria	0	Presence of coliform bacteria in <gr-thn-eq>5% of monthly samples.	Naturally present in the environment.
{Page 44532}			
2. Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive.	Human and animal fecal waste.
3. Turbidity	n/a	TT	Soil runoff.
Radioactive Contaminants			
	0	4	Decay of natural and man-made deposits.
4. Beta/photon emitters (mrem/yr)			
5. Alpha emitters (pCi/l)	0	15	Erosion of natural deposits.
6. Combined radium (pCi/l)	0	5	Erosion of natural deposits.
Inorganic Contaminants			
			Discharge from petroleum refineries; fir

			solder.
7. Antimony (ppb)			
8. Arsenic (ppb)	n/a	50	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.
9. Asbestos (MFL)	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.
10. Barium (ppm)	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
11. Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries
12. Cadmium (ppb)	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints.
13. Chromium (ppb)	100	100	Discharge from steel and pulp mills; Erosion of natural deposits
14. Copper (ppm)	1.3	AL=1.3	Corrosion of household plumbin systems; Erosion of natural deposits; Leachingfrom wood preservatives.
15. Cyanide (ppb)	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
16. Fluoride (ppm)	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.
17. Lead (ppb)	0	AL=15	Corrosion of household plumbin systems; Erosion of natural deposits.
18. Mercury {inorganic} (ppb)	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
19. Nitrate {as Nitrogen} (ppm)	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.

20. Nitrite {as Nitrogen} (ppm)	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
21. Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; Erosion ofnatur deposits; Discharge from mines.
22. Thallium (ppb)	0.5	2	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.
Synthetic Organic Contaminants			
including Pesticides and Herbicides	70	70	Runoff from herbicide used on row crops.
23. 2,4-D (ppb)			
24. 2,4,5-TP {Silvex} (ppb)	50	50	Residue of banned herbicide.
25. Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
26. Alachlor (ppb)	0	2	Runoff from herbicide used on row crops.
27. Atrazine (ppb)	3	3	Runoff from herbicide used on row crops.
28. Benzo(a)pyrene {PAH} (nanograms/l)	0	200	Leaching from linings of water storage tanks and distribution lines.
29. Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
30. Chlordane (ppb)	0	2	Residue of banned termiticide.
31. Dalapon (ppb)	200	200	Runoff from herbicide used on rights of way.
32. Di(2-ethylhexyl) adipate (ppb)	400	400	Discharge from chemical factories.
33. Di(2-ethylhexyl) phthalat (ppb)	0	6	Discharge from rubber and chemical factories.
34. Dibromochloropropane (ppt)	0	200	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
35. Dinoseb (ppb)	7	7	Runoff from herbicide used on soybeans and vegetables.
36. Diquat (ppb)			

	20	20	Runoff from herbicide use.
{Page 44533}			
37. Dioxin {2,3,7,8-TCDD} (ppq)	0	30	Emissions from waste incineration and other combustion; Discharge from chemical factories.
38. Endothall (ppb)	100	100	Runoff from herbicide use.
39. Endrin (ppb)	2	2	Residue of banned insecticide.
40. Epichlorohydrin	0	TT	Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
41. Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
42. Glyphosate (ppb)	700	700	Runoff from herbicide use.
43. Heptachlor (ppt)	0	400	Residue of banned termiticide.
44. Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
45. Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
46. Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
47. Lindane (ppt)	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.
48. Methoxychlor (ppb)	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa livestock.
49. Oxamyl {Vydate} (ppb)	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.
50. PCBs {Polychlorinated biphenyls} (ppt)	0	500	Runoff from landfills; Discharge of waste chemicals.
51. Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
52. Picloram (ppb)	500	500	Herbicide runoff.
53. Simazine (ppb)	4	4	Herbicide runoff.
54. Toxaphene (ppb)	0	3	Runoff/leaching from insecticide used on cottonand cattle.
Volatile Organic Contaminants			
	0	5	Discharge from factories; Leaching from gas storage tanks

	0	5	Leaching from gas storage tanks and landfills.
55. Benzene (ppb)			
56. Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
57. Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
58. o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
59. p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
60. 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
61. 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
62. cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
63. trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
64. Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
65. 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
66. Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
67. Styrene (ppb)	100	100	Discharge from rubber and plastic factories; Leaching from landfills.
68. Tetrachloroethylene (ppb)	0	5	Leaching from PVC pipes; Discharge from factories and dry cleaners.
69. 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.
70. 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
71. 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
72. Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
73. TTHMs {Total trihalomethanes} (ppb)	0	100	By-product of drinking water chlorination.
74. Toluene (ppm)	1	1	Discharge from petroleum factories.
75. Vinyl Chloride (ppb)	0	2	Leaching from PVC piping; Discharge from plastics factories.
76. Xylenes (ppm)	10	10	Discharge from petroleum factories; Discharge from chemical factories.

(1) Total Coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/E.Coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

(3) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants

(4) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(5) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(6) Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

Inorganic Contaminants

(7) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(8) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(9) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(10) Barium. Some people who drink water containing barium in excess of the

MCL over many years could experience an increase in their blood pressure.

(11) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(12) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(13) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(14) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(15) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(16) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(17) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(18) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(19) Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(20) Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(21) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(22) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic Organic Contaminants Including Pesticides and Herbicides

(23) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or

adrenal glands.

(24) 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(25) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(26) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(27) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(28) Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(29) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(30) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(31) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(32) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

(33) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(34) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(35) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(36) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(37) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(38) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(39) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(40) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(41) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(42) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(43) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(44) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(45) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(46) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(47) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(48) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(49) Oxamyl [Vydate]. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(50) PCBs [Polychlorinated biphenyls]. Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(51) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(52) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(53) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(54) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants

(55) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(56) Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(57) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(58) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(59) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(60) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(61) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(62) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(63) trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(64) Dichloromethane. Some people who drink water containing dichloromethane

in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(65) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(66) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(67) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(68) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(69) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(70) 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(71) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(72) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(73) TTHMs [Total Trihalomethanes]. Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

(74) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(75) Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(76) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Figure: 30 TAC §290.275(4)

Appendix D-Unregulated Contaminants

(1) Chloroform

(2) Bromodichloromethane

(3) Chlorodibromomethane

(4) Bromoform

(5) Dibromomethane

(6) m-Dichlorobenzene

(7) [Reserved]

(8) 1,1-Dichloropropene

(9) 1,1-Dichloroethane

(10) 1,1,2,2-Tetrachloroethane

(11) 1,3-Dichloropropane

(12) Chloromethane

(13) Bromomethane

(14) 1,2,3-Trichloropropane

(15) 1,1,1,2-Tetrachloroethane

(16) Chloroethane

(17) 2,2-Dichloropropane

(18) o-Chlorotoluene

(19) p-Chlorotoluene

(20) Bromobenzene

(21) 1,3-Dichloropropene

Figure: 31 TAC §719.136(f)

Reduction Stage	J-17 Well Level	TD 69-47-306 Well Level	J-27 Well Level	Maximum Allowable Withdrawals (1)	Transfer Withdrawals
I	650	670	845	95% of the authorized pumping amount for that corresponding month.	95%
II	640	660	840	90% of the authorized pumping amount for that corresponding month.	90%
III Emergency Springflow Protection Measures	630	655	835	85% of the authorized pumping amount for that corresponding month.	85%

(1) See definition of authorized pumping amount and maximum allowable withdrawals in §719.1 of this title (relating to Definitions).

Figure: 31 TAC §719.142(4)

Last Digit of Address	Day
0-1	Monday
2-3	Tuesday
4-5	Wednesday
6-7	Thursday
8-9	Friday

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.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of April 26, 2000, through May 3, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: City of Nassau Bay; Location: The project site is located in the Nassau Bay Channel, which connects Clear Creek to Nassau Bay, in the City of Nassau Bay, Harris County, Texas. CCC Project No.: 00-0134-F1; Description of Proposed Action: The applicant proposes to amend Permit Number 21060 to perform hydraulic dredging in the Nassau Bay Channel. The area to be dredged is approximately 1,500 feet long with a bottom width of 40 feet. Approximately 5,400 cubic yards of dredged material will be dredged from the channel and placed in two upland areas. Levees have been constructed around the upland placement areas to prevent the dredged material from impacting the adjacent wetlands. Type of Application: U.S.A.C.E. permit application #21060(10) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: The Galveston Bay Foundation; Location: The project site is located on the eastern shoreline of Armand Bayou approximately 1 mile north of the NASA Road One bridge in Harris County, Texas. CCC Project No.: 00-0135-F1; Description of Proposed Action: The applicant is requesting an extension of time to maintain and complete the work authorized under their original permit. The original permit authorized the creation of 7 acres of intertidal wetlands. Amendment (01) revised the project to allow for the permanent retention of a berm designed to protect the created wetlands. Type of Application: U.S.A.C.E. permit application #20270(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: Cockrell Oil Corporation; Location: The site is located on State Tract 154, Matagorda Bay, Calhoun County, Texas. UTM Coordinates: Zone 14; Easting: 758843; Northing: 3164390. CCC Project No.: 00-0136-F1; Description of Proposed Action: The applicant proposes to drill wells E-1 and E-2 from adjacent surface locations and install an ancillary structure to provide access and protection for both wells in the S/2 of State Tract 154. Type of Application: U.S.A.C.E. permit application #21361/005 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: Cockrell Oil Corporation; Location: The site is located on State Tract 154, Matagorda Bay, Calhoun County, Texas. UTM Coordinates: Zone 14; Easting: 760173; Northing: 3164481. CCC Project No.: 00-0137-F1; Description of Proposed Action: The applicant proposes to drill wells C-1 and C-2 from adjacent surface locations and install an ancillary structure to provide access and protection for both wells in the S/2 of State Tract 154. Type of Application: U.S.A.C.E. permit application #21361/006 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: Grover Land Tejas Development; Location: The project site is located northwest of the intersection of County Road 522 and the San Bernard River southwest of Guy, Fort Bend County, Texas. CCC Project No.: 00-0138-F1; Description of Proposed Action: The applicant proposes preservation of a 55.68-acre forested tract that contains 22.9 acres of wetlands and 32.75 acres of uplands. The MMS Hunting Club would manage the site. Type of Application: U.S.A.C.E. permit application #21649-revised under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: East Point, Ltd.; Location: The project site is located on Little Cow Bayou at the GIWW, Brazoria County, Texas. CCC Project No.: 00-0139-F1; Description of Proposed Action: The applicant proposes to install a water control structure (WCS) on an existing 48-inch culvert. The purpose of the proposed WCS is to restore hydrology to the marsh. Type of Application: U.S.A.C.E. permit application #11339(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: John Craig Lang; Location: The project is located at 1300 N. Crystal Beach Road on the Intracoastal Waterway, Crystal Beach, Galveston County, Texas. CCC Project No.: 00-0140-F1; Description of Proposed Action: The applicant proposes to amend Permit Number 21595 to add a 33-foot-wide by 30-foot-long boathouse for private use

which includes two boat slip areas and a storage area. The boathouse will be covered. Type of Application: U.S.A.C.E. permit application #21595(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Ronald Hackney and Stacy Carterl; Location: The project site is located on Corpus Christi Bay at 1014 Bayshore Drive, Ingleside-on-the-Bay, San Patricio County, Texas. CCC Project No.: 00-0141-F1; Description of Proposed Action: The applicant proposes to modify an existing 3-foot-wide by 96-foot-long pier with an 8-foot by 10-foot terminal T-head by adding a 3-foot by 95-foot walkway extension with a 6-foot by 13-foot terminal L-head and a 10-by 20-foot boathouse. The boathouse will be located at the end of the extension immediately behind the L-head. Type of Application: U.S.A.C.E. permit application #7441(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: City of Aransas Pass; Location: The project is located at the Community Park on Johnson Avenue, one mile south of its intersection with SH 361, Aransas Pass, San Patricio County, Texas. CCC Project No.: 00-0142-F1; Description of Proposed Action: The applicant proposes to construct a swimming pool complex in the Aransas Pass Community Park, which will include a swimming pool with recreational areas, lap lanes, and associated facilities such as a bath house, parking area, and utility services. A total of 0.98 acre of wetlands will be impacted by the project. Approximately 28,000 cubic yards of dry, stockpiled, dredged material will be used to fill these areas. Type of Application: U.S.A.C.E. permit application #18446(03) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: The Farther Point Property Owners Association; Location: The project is located adjacent to Buffalo Bayou in the Farther Point Subdivision in Harris County, Texas. CCC Project No.: 00-0143-F1; Description of Proposed Action: The applicant is requesting an extension of time to complete the work authorized under their original permit. The original permit authorized the placement of a water pump to divert water from Buffalo Bayou into an abandoned oxbow channel. Type of Application: U.S.A.C.E. permit application #20876(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Edward Stanton; Location: The project is located in the Trinity Bay section of Galveston Bay east of the Trinity River Channel, immediately north of Double Bayou, near Oak Island, Chambers County, Texas. CCC Project No.: 00-0144-F1; Description of Proposed Action: The applicant is seeking an amendment and an extension of time to perform maintenance dredging in a small boat channel used by residents in Oak Island. The original permit and previous amendments authorized placement of the dredged material alongside an existing sand bar island and dredging to a final configuration designed for a federally maintained navigation channel. However, the sand bar island and the dredged material previously placed adjacent to it eroded significantly. Therefore, under this amendment, the applicant is seeking to place concrete, bagged concrete, and a rip-rap berm to create a triangular confined area with a maximum surface area of 75,000 square feet. The applicant will also construct a 300-foot by 4-foot pier to facilitate construction and filling of the confined area. Type of Application: U.S.A.C.E. permit application #17315(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-200003298
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: May 10, 2000

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Withdrawal

In accordance with Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) hereby withdraws the Request for Proposals (RFP) for consulting services to conduct financial management reviews of up to forty (40) city and county governments throughout the state.

The notice of the RFP was published in March 31, 2000, issue of the *Texas Register* (25 TexReg 2844).

TRD-200003297
Pamela Ponder
Deputy General Counsel
Comptroller of Public Accounts
Filed: May 10, 2000

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/15/00 - 05/21/00 is 18% for Consumer1/Agricultural/ Commercial2/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/15/00 - 05/21/00 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200003249
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 9, 2000

♦ ♦ ♦

Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of award for the Texas Youth Commission - Vernon Fire Walls, Requisition Number: 696-FD-0-B031.

The Contract was awarded to Santa Rosa Construction, P.O. Box 672, Vernon, Texas 76385-0672, (940) 552-9743, (940) 552-5577 (fax), on May 01, 2000, for a dollar amount of $35,963. Contract Number: 696-FD-0-0-C0262.

TRD-200003276
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: May 10, 2000

♦ ♦ ♦

Interagency Council on Early Childhood Intervention

Notification of Request for Proposals

Notice of Invitation. The Interagency Council on Early Childhood Intervention (ECI) announces a Request for Proposal (RFP) for funding comprehensive early childhood intervention services in Maverick County for the period from October 1, 2000 through August 31, 2001. The scope of work includes a comprehensive array of services to children with developmental delays and their families. All applicants must comply with all program requirements under V.T.C.A., Human Resources Code, Chapter 73 and 25 Texas Administrative Code, Chapter 621.

Contact Person. The RFP is available to all interested parties upon written request to Roland Greer, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Suite 2101, Austin, Texas 78751-2399. A hard copy may also be obtained by calling (512) 424-6824 or by visiting the ECI administrative office at the address listed in this notice. Questions should be directed to Roland Greer at (512) 424-6815.

Closing Date. All proposals to be considered for funding must be received in the ECI administrative office by 5:00 p.m. on August 11, 2000. ECI reserves the right to reject all proposals if necessary.

Selection Criteria. Proposals will be evaluated based on the following "Best Value" criteria: past performance, quality of services, cost, ability to maximize local and federal income, ability to comply with state and federal program requirements, ability to deliver required services, and service area configuration. Review teams will make recommendations to the ECI Board for approval or denial of proposals received.

TRD-200003275
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: May 10, 2000

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Even Start Family Literacy, School Year 2000-2001

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-00-028 authorized by the Elementary and Secondary Education Act (ESEA) of 1965, Title I, Part B-Even Start Family Literacy Programs, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, for development of a program to improve the educational opportunities of children and adults by integrating early childhood and adult education for parents into a unified program. Applications are being requested from: a local education agency (LEA) applying in partnership with a community-based organization, a public agency, an institution of higher education, or other nonprofit organization; a community-based organization or other nonprofit organization of demonstrated quality applying in partnership with a LEA; or an education service center applying as a fiscal agent of a shared services arrangement of school districts in partnership with a community-based organization, a public agency, an institution of higher education, or other nonprofit organization

Description. The overall objectives of the Even Start Family Literacy Program include the following: (1) to provide family-centered education projects that help parents become full partners in the education of their children; (2) to assist children receiving early childhood education in reaching their full potential as learners; (3) to provide literacy training for parents of family units participating in the project; (4) to improve the educational opportunities of the nation's children and adults by integrating early childhood education and adult education for parents into a unified program; (5) to assist families with parenting strategies in child growth and development and educational process for children from birth through age seven; and (6) to coordinate efforts that build on existing community resources to create a new range of services.

To qualify for this program a family must be in need of the Even Start services, as indicated by a low-level income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need- related indicators. Eligible participants in this program are as follows: a parent or parents who are eligible for participation in an adult basic education program under the Adult Education and Family Literacy Act; a parent or parents who are within the state's compulsory school attendance age range, as long as a LEA provides or ensures the availability of the basic education component; and a child or children, from birth through age seven, of the parents as described previously. The family must participate in all elements of the program.

Dates of Project. The Even Start Family Literacy Program will be implemented during the 2000-2001 school year. Applicants should plan for a starting date of no earlier than September 1, 2000, and an ending date of no later than August 31, 2001.

Project Amount. Funding will be provided for approximately 20 projects. Federal law requires that each grant be at least $75,000 per year. The maximum amount is limited to $200,000 per year. Funding for continuation of the project each year, for up to four years, will be based on satisfactory progress of each year's objectives and activities and on general budget approval by the State Board of Education, the commissioner of education and authorization and appropriation by the U.S. Congress. For the first year, this project is funded 90% from Title I, Part B, federal funds ($4,000,000) and 10% from non Title I, Part B, sources ($444,444) at the local level. Cost sharing for the four years will be 10% of the total cost of the program in the first year the eligible entity receives assistance, 20% in the second year, 30% in the third year, and 40% in the fourth year. Grantees who complete four years of funding can apply and compete for a new four-year funding cycle to continue a program. Cost sharing in the fifth, sixth, seventh, and eighth years will be 50% and 65% in any subsequent year. The TEA limits funding to no more than one project to each partnership (eligible entity).

Selection Criteria. Applications will be selected based on the independent reviewer's assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. A list of selection criteria is included in the application packet. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-028 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing the request to (512) 463-9811, or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Effie Franklin or Rachel Lane, Division of Adult and Community Education, TEA, (512) 463-9294.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, July 13, 2000, to be considered.

TRD-200003303
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: May 10, 2000

♦ ♦ ♦

Request for Applications Concerning Public Law 103-382, Elementary and Secondary Education Act (ESEA) Title I, Part A-Capital Expenses, 2000-2001

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) # 701-00-026 from school districts that have incurred capital expenses since July 1, 1995, or will incur such expenses during the 2000-2001 school year, as a result of implementation of alternative delivery systems to comply with the requirements of Aguilar v. Felton in providing Title I, Part A, services to students attending private, religiously affiliated schools.

Description. Under Public Law 103-382, Title I, Part A, §1120(e), the term "capital expenses" means expenditures for noninstructional goods and services, such as: the purchase, lease, rental, and renovation of real and personal property (including, but not limited to, mobile educational units and leasing of neutral sites or space); insurance and maintenance costs; transportation; technician costs for the supervision of computer-assisted instruction (CAI); and other comparable goods and services. Under Code of Federal Regulations (CFR), Title 34, §200.16, capital expenses do not include the purchase of instructional equipment such as computers. However, if the local education agency (LEA) has used Title I, Part A, funds for Capital Expenses items such as those listed previously, the LEA may apply to be reimbursed for these items. Because reimbursement funds are replacing Title I, Part A, funds that were removed from the instructional program in order to pay for capital expenses, the reimbursement funds should be put back into the instructional program. In this case, requests for instructional equipment, supplies, and services may be included in the application. If funds remain after all requests for current-year capital expenses are met, requests for instructional items will be considered.

Dates of Project. The Title I, Part A-Capital Expenses project will be implemented during the 2000-2001 school year, starting no earlier than July 1, 2000, and ending no later than June 30, 2001.

Project Amount. The projected state total available for these projects is $487,263. These projects are funded 100% from Elementary and Secondary Education Act (ESEA), as amended by Public Law 103-382, Title I, Part A- Capital Expenses.

Selection Criteria. Applications submitted in response to this RFA must address all required components of the RFA. Applications are non-competitive and will be selected according to the following criteria:

(1) Requests for funding to meet current-year capital expenses will be categorized as Priority 1.

(2) Requests for funding to reimburse the Title I, Part A, program for prior-year capital expenses will be categorized as Priority 2. Only requests for prior-year expenses from school years 1995-96, 1996-97, 1997-98, 1998- 99, and 1999-2000 will be considered under Priority 2.

If the level of funding is insufficient to fund all eligible applicants under Priority 1, a ratably reduced share will be granted for Priority 1 expenses and no funds will be distributed under Priority 2. The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA # 701-00-026 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number, including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Sam Lester, Division of Student Support Programs, TEA, (512) 463-9374.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of TEA by 5:00 p.m. (Central Time), Friday, June 30, 2000, to be considered.

TRD-200003302
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: May 10, 2000

♦ ♦ ♦

Request for Proposals Concerning Summer Remediation Study Guides

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-00-027 for the printing and distribution of summer remediation study guides for parents to assist students who do not perform satisfactorily on the Texas Assessment of Academic Skills (TAAS) at Grades 3-8 and exit level. Eligible proposers are regional education service centers, institutions of higher education, non-profit organizations, for-profit organizations, or a consortium of the foregoing. Historically Underutilized Businesses (HUBs) are encouraged to determine their possible role in this endeavor.

Description. The Texas Education Code (TEC), §39.024(c), requires TEA to make available study guides to help parents provide assistance to students during summer recess. Each school district is required to distribute the study guides to parents of students who do not perform satisfactorily on one or more portions of the TAAS. These study guides have been developed under a previous contract. This RFP primarily involves the printing and distribution of these current study guides, with minor corrections and edits as needed. The contractor must also be prepared to develop new material as deemed necessary by TEA. TEA will assist the new contractor in the transfer of necessary materials and files from the current study guides contractor. The new contractor must begin responding to individual requests for study guides no later than February 1, 2001, and begin shipping an appropriate number of free study guides to the districts to correspond with the timing of the release of spring 2001 TAAS results.

The TAAS program currently measures the state-mandated curriculum, the Texas Essential Knowledge and Skills (TEKS), in reading and mathematics at Grades 3-8 and at the exit level; in writing at Grades 4 and 8 and at the exit level; and in science and social studies at Grade 8. Spanish-version TAAS tests measure the TEKS in reading and mathematics at Grades 3-6 and in writing at Grade 4. Satisfactory performance on the exit-level tests is prerequisite to a high school diploma from a Texas public school. Demonstrating satisfactory performance on a specific combination of end-of-course tests is an alternative means for students to be eligible to graduate. The Algebra I, Biology, English II, and U.S. History end-of-course tests measure the TEKS in these corresponding high school courses.

The statewide assessment program has also recently added two assessments: the reading proficiency tests in English (RPTE) and alternative assessment. The RPTE was first administered to limited English proficient (LEP) students in spring 2000. The RPTE, combined with the TAAS in English and Spanish, provides a comprehensive system for assessing LEP students. The RPTE, designed specifically for second language learners, will provide useful data on these students' current reading levels and will be a measure of growth in their English reading proficiency. As specified by TEC, §39.023, the alternative assessment will measure the academic performance in reading and mathematics, Grades 3-8, and writing, Grades 4 and 8, of special education students who are being instructed in the TEKS but who are exempted from the TAAS test by their admission, review and dismissal (ARD) committees because this test is not an appropriate measure of their academic progress, even with allowable accommodations. The alternative assessment, which will be administered beginning in spring 2001, will assess students at their appropriate instructional levels, as determined by their ARD committees, rather than at their assigned grade level.

Dates of Project. Proposers should plan for a starting date of no earlier than September 15, 2000, and an ending date of no later than August 31, 2002.

Project Amount. Funding for this project is subject to the availability of funds appropriated by legislative act for the purposes stated.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out the requirements contained in this RFP. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and will best achieve the outcomes desired.

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 #701-00-027 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFP number in your request. Please also note that by Friday, June 9, 2000, all prospective proposers should notify TEA at this address in writing of their intent to submit proposals.

Further Information. For clarifying information about this RFP, contact Keith Cruse, Student Assessment Division, TEA, (512) 463-9536.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (central time), July 28, 2000, to be considered.

TRD-200003301
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: May 10, 2000

♦ ♦ ♦

Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Medical Clinic of Pearland, Pearland, R14483; Anant Mauskar, M.D., P.A., Houston, R22288; Joseph A. Zavaletta, M.D., P.A., Brownsville, R23065; Pain Institute of Texas, Houston, R24420; Alamo Family Physicians, San Antonio, R24541; T. F. Worford, D.D.S., Dallas, R10810; Park Plaza Dental, Kingwood, R23062; Twin Oaks Dental, Houston, R24085; Paragon Dental Group LLC, Houston, R24606; Bradburry and Associates, Houston, R24392; Caesar J. Thibodeaux, Inc., Pasadena, R23053; Kirkpatrick Chiropractic Clinic, Kerrville, R23068; Padre Animal Hospital, P.C., Corpus Christi, R05436.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the

provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200003266
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 9, 2000

♦ ♦ ♦

Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: LeeAnn O. Coffen, Fulshear, G02039; Instrument Specialities Company, Inc., Euless, L03998; Lead Based Paint Detection Corp, Houston, L04586; Berthold Systems, Incorporated, Houston, L04597.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200003265
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 9, 2000

♦ ♦ ♦

Notice of Request for Proposals for Human Immunodeficiency Virus Prevention Projects

INTRODUCTION

The Texas Department of Health (department) requests proposals for Human Immunodeficiency Virus (HIV) prevention projects for the project period November 1, 2000, through December 31, 2001. The department is seeking to select providers of services from agencies who currently do not have contracts with the department for HIV prevention activities. The purpose of this project is to target unmet HIV prevention needs within high priority populations. Human Immunodeficiency Virus prevention project proposals will be reviewed and awarded on a competitive basis.

PERIOD OF PROJECT

Fourteen months from November 1, 2000 through December 31, 2002.

AVAILABLE FUNDS

The projected amount available is approximately $250,000 per 12-month period. The department expects to fund two to four projects. The average award is expected to be approximately $80,000.

PURPOSE

The HIV prevention activities are addressed to target populations described in the Regional Action Plans. A gap analysis performed by the department shows priority unmet needs of the at-risk populations in Texas to be men who have sex with men (MSMs) and injecting drug users (IDUs), especially among minority populations.

ELIGIBLE APPLICANTS

Eligible entities include governmental, public or private nonprofit entities located within Texas that are not currently contracted with the department for HIV prevention activities, 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.

SCHEDULE OF EVENTS

Issuance of the Request for Proposals (June 2, 2000)

Application Deadline (August 2, 2000)

Award Notification By (September 1, 2000)

Contract Start Date (November 1, 2000)

TO OBTAIN A COPY OF THE RFP

For a copy of the RFP, contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (512) 490-2525 or e-mail laura.ramos@tdh.state.tx.us. Copies of the RFP and forms may also be obtained at the web site of the Bureau of HIV/STD Prevention, http://www.tdh.state.tx.us/hivstd/grants. No copies of the RFP will be released prior to June 2, 2000.

TRD-200003304
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 10, 2000

♦ ♦ ♦

Texas 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 00-04, Amendment Number 569.

The amendment updates the State plan by changing the effective date of eligibility for aged, blind and disabled clients. Medicaid coverage begins the first day of the month if the client is eligible at any time during the month. The amendment is effective April 1, 2000.

If additional information is needed, please contact Judy Coker, Texas Department of Human Services, at 512-438-3227.

TRD-200003294
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: May 10, 2000

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing for the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Parks at Westmoreland Apartments) Series 2000

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at DeSoto City Hall, 211 East Pleasant Run Road, Bluebonnet Meeting Room I, DeSoto, Texas 75115, at 6:00 p.m. on Monday, June 12, 2000 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $9,535,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to The Parks at Westmoreland Senior Housing, L.P. (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the acquisition, construction and equipping of a multifamily housing seniors project (the "Project") described as follows: 250 unit multifamily residential rental development to be constructed on approximately 17.42 acres of land located at 2800 Bolton Boone, DeSoto, Dallas County, Texas 75115. The Project will be owned and operated by The Parks at Westmoreland Senior Housing, L.P. The Project will be managed by Southwest Housing Management.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

http://www.tdhca.state.tx.us/hf.htm

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-200003295
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 10, 2000

♦ ♦ ♦

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 SENTINEL INSURANCE COMPANY, LTD., a foreign fire and casualty company. The home office is in Hartford, Connecticut.

Application to use the assumed name of HUMANA by MEMORIAL SISTERS OF CHARITY HMO, L.L.C., a domestic health maintenance organization. The home office is in Houston, Texas.

Application to use the assumed name of PCA HEALTH PLANS OF TEXAS, INC. by HUMANA HEALTH PLAN OF TEXAS, INC., a domestic health maintenance organization. The home office is in San Antonio, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200003300
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 10, 2000

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Antares Management Solutions, LLC, a foreign third party administrator. The home office is Cleveland, Ohio.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200003305
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 10, 2000

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Extension of Comment Period

In the March 10, 2000, issue of the *Texas Register* (25 TexReg 1979), the Texas Natural Resource Conservation Commission (commission) published proposed amendments to numerous sections of 30 TAC Chapter 122, including specific provisions to implement periodic monitoring required by 40 CFR Part 70, Operating Permit Program. In that same issue of the *Texas Register* (25 TexReg 2201), notice was provided of the availability for comment of the draft Periodic Monitoring General Operating Permit (draft Periodic Monitoring GOP #1). The comment period for the proposed revisions to 30 TAC Chapter 122 and the draft Periodic Monitoring GOP # 1 closed at 5:00 pm, April 13, 2000. On April 14, 2000, the United States Court of Appeals for the District of Columbia Circuit issued its opinion for *Appalachian Power Company, et al, vs. Environmental Protection Agency*, No. 98-1512, concerning the Environmental Protection Agency's guidance for the implementation of periodic monitoring. The commission is offering an extended public comment period to allow for comments specifically on the impact, if any, of the *Appalachian Power* case, on the proposed revisions to 30 TAC Chapter 122 and to the draft Periodic Monitoring GOP # 1. The new comment period will close at 5:00 pm, May 29, 2000.

Copies of the draft Periodic Monitoring GOP # 1 may be obtained from the TNRCC Internet site at http://www.tnrcc.state.tx.us/air/opd or by contacting the TNRCC Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1334. Written comments may be submitted to Lisa Martin, 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 1999-014-122- AI. For further information, please contact Beecher Cameron, Office of Environmental Policy, Analysis, and Assessment at (512) 239-1495.

TRD-200003296
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 10, 2000

♦ ♦ ♦

Notice of Municipal Solid Waste Landfill General Operating Permit Issuance

Notice is hereby given that the Texas Natural Resource Conservation Commission (TNRCC) executive director issued the Municipal Solid Waste Landfill (MSWL) General Operating Permit (GOP) under the requirements of 30 TAC Chapter 122, Subchapter F, concerning General Operating Permits.

The MSWL GOP is available for use by the owners or operators of major source sites (sites) or nonmajor sites subject to the operating permits program. The MSWL GOP will provide an alternate permitting mechanism for MSWL sites under Chapter 122, consistent with Title 40 Code of Federal Regulations, Part 70 requirements that authorize the operation of multiple sites that are similar in terms of operations, processes, and emissions.

Beginning on May 19, 2000, the MSWL GOP is subject to public petition for 60 days as specified under §122.360. Any person affected by the decision of the executive director to issue the MSWL GOP may petition the United States Environmental Protection Agency (EPA) to make an objection. Petitions shall be based only on objections to the MSWL GOP that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA that it was not possible to raise the objections within the public comment period. The petition shall identify all objections. A copy of the petition shall be provided to the executive director by the petitioner. The executive director shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the MSWL GOP.

Copies of the MSWL GOP and final technical summary may be obtained from the TNRCC Internet site at http://www.tnrcc.state.tx.us/air/opd/permtabl.htm or by contacting the TNRCC Air Permits Division, Office of Permitting, Remediation & Registration, (512) 239-1334. For further information or questions concerning the MSWL GOP, contact Bruce McFarland of the Air Permits Division, Office of Permitting, Remediation & Registration, telephone number (512) 239-1132.

TRD-200003299
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 10, 2000

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC staff proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 19, 2000**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that a proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 19, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Ahmed, Incorporated dba Tote-A-Bag; DOCKET NUMBER: 1998-0652-PST- E; TNRCC IDENTIFICATION (ID) NUMBER: 39407; LOCATION: 11111 Kingsley, Suite 101, Dallas, Dallas County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: 30 TAC §115.242(3)(A) and (J) by failing to provide and maintain all components of the Stage II vapor recovery system (VRS) in proper operating condition and free of defects that would impair the effectiveness of the system; 30 TAC §115.244(3) and §115.246(7)(A) by failing to conduct monthly inspections of the Stage II VRS and by failing to maintain records on-site; 30 TAC §115.245(2) by failing to conduct an annual pressure decay test; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and the Code, §26.348 by failing to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank daily and by failing to reconcile inventory records at least once a month; and 30 TAC §334.7(d)(3) and the Code, §26.346 by failing to file any change or addition to the registration of the USTs within 30 days after the date of occurrence; PENALTY:$23,250; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Saul Doria dba Pickering Automotive; DOCKET NUMBER: 1998-1543-AIR- E; TNRCC ID NUMBER: HX-1907-D; LOCATION: 610 Pickering Street, Houston, Harris County, Texas; TYPE OF FACILITY: automotive repair and finishing shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b) by failing to obtain a permit or meet the conditions of a permit exemption before operating a spray coating operation at the shop; 30 TAC §115.421 and §106.436 and THSC, §382.085(b) by failing to meet the volatile organic compound content limit of 1.4 pounds per gallon for wipe down solutions; and 30 TAC §115.426 and THSC, §382.085(b) by failing to maintain and make available upon request records of paint and solvent usage for at least two years; PENALTY: $10,000; STAFF ATTORNEY: John C. Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3)COMPANY: Leon Heijligers dba Center Point Dairy; DOCKET NUMBER: 1999-0801-AGR- E; TNRCC ID NUMBER: 03872; LOCATION: on the south side of Farm-to-Market Road 2653, Brashear, Hopkins County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.31(a), the Code, §26.121, and Water Quality Permit Number 03872 Provision (V) by failing to prevent the unauthorized discharge of wastewater from an inadequate and overflow of wastewater retention structure into surface waters in the state; 30 TAC §321.40(11) and Water Quality Permit Number 03872 Provision (VI)(4.1) by failing to properly dispose of dead animals (cows) which were not buried with the required three feet of cover and were located within 150 feet of a drainage way; 30 §321.39(f)(29) and Water Quality Permit Number 03872 Provision (VI)(2.4) by failing to conduct an annual analysis of waste and irrigation wastewater for total nitrogen, total phosphorus, and total potassium, and submit the test results to the Tyler Regional Office; and 30 TAC §321.39(f)(6), §321.39(f)(11), and Water Quality Permit Number 03872 Provision (VI)(1.3) by failing to dewater the wastewater retention structure in order to maintain adequate freeboard and sufficient capacity to contain rainfall and rainfall runoff from a 25 year/24 hour rainfall event; PENALTY:$8,750; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701- 3756, (903) 535-5100.

(4) COMPANY: Randy Risinger; DOCKET NUMBER: 1999-0729-IRR-E; TNRCC ID NUMBER: 13720; LOCATION: 618 Forest Glen, Montgomery, Montgomery County, Texas; TYPE OF FACILITY: irrigation systems; RULES VIOLATED: 30 TAC Chapter 344 and the Code, §34.007 by installing an irrigation system without a license; PENALTY: $500; STAFF ATTORNEY: Mary Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200003160
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 5, 2000

♦ ♦ ♦

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **June 19, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 19, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Diamond Mini-Mart, Incorporated; DOCKET NUMBER: 1999-0655-PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 2350041; LOCATION: ten miles northeast of Victoria on U.S. Highway 59, Victoria County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(1)(A), (2), and (m) by failing to maintain a free chlorine residual of 0.2 milligrams per liter in the far reaches of the distribution system at all times, by failing to test the chlorine residual using a test kit which employs a diethyl-p-phenylenediamine indicator at least once every seven days and by failing to initiate a maintenance program to facilitate cleanliness and improve the general appearance of all plant facilities, including the unsanitary well house; and 30 TAC §290.41(c)(3)(K) by failing to provide the well casing vent with a 16-mesh or finer corrosion- resistant screen; PENALTY:$2,475; STAFF

ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Raeford Harrington dba Harrington Environmental Services; DOCKET NUMBER: 1998-1136-SLG-E; TNRCC ID NUMBER: 20579; LOCATION: 1632 Royalwood Circle, Joshua, Johnson County, Texas; TYPE OF FACILITY: solid waste transportation; RULES VIOLATED: 30 TAC §312.145(b)(4)(A) by failing to submit a complete annual summary report for the reporting period ending in May 1998, for sludge and septic transportation activities; and 30 TAC §312.142(f)(3) and §335.6(d) by failing to notify the authorities within 15 days of plans to handle wastes that were not contained in existing registration; PENALTY: $2,500; STAFF ATTORNEY: I-Jung Chiang, Litigation Division, MC R-12, (713) 767-3500; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Morris Rosenstein and San-Tex Lumber Company, Incorporated; DOCKET NUMBER: 1996-1615-IHW-E; TNRCC ID NUMBER: 84635; LOCATION: 2439 Old Castroville Road and 119 Old Castroville Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: abandoned electroplating facility; RULES VIOLATED: 30 TAC §335.2(a), §335.43(a), and 40 Code of Federal Regulations (CFR) §270.1 by storing industrial solid and hazardous wastes at the sites without a permit or other authorization from the commission; 30 TAC §335.112(a)(1) and 40 CFR §265.14 by failing to provide adequate security to prevent unknowing entry and minimize the possibility for unauthorized entry into the unauthorized storage facility located at the 2439 site; 30 TAC §335.112(a)(8) and 40 CFR §265.177(c) by failing to separate incompatible industrial solid and/or hazardous wastes or protect incompatible wastes by means of a dike berm, wall, or other device at the sites; 30 TAC §335.112(a)(1) and 40 CFR §265.16(a) by failing to provide training in the management of hazardous wastes to employees handling the wastes; 30 TAC §335.2(b) by transporting to and/or causing, suffering, allowing, and/or permitting the storage, treatment, and/or disposal of industrial solid and hazardous wastes at an unauthorized facility; 30 TAC §335.10(a) and 40 CFR §262.20 by causing, suffering, allowing, and/or permitting the shipment of industrial solid and hazardous wastes from the point of generation at the 2439 site to an unauthorized facility without a manifest or form TNRCC-0311; 30 TAC §335.62, §335.504 and 40 CFR §262.11 by failing to complete hazardous waste determinations for wastes at the 2439 site; 30 TAC §335.4 and the Code, §26.121 by causing, suffering, allowing, and/or permitting the disposal of hazardous wastes in such a manner so as to cause a discharge or an imminent threat of discharge of industrial solid wastes into or adjacent to the waters in the state without first obtaining specific authorization for such a discharge from the commission; and 30 TAC §335.65 and 40 CFR §262.30 by transporting or offering for transportation off-site hazardous wastes without meeting the proper packaging requirements of the Department of Transportation regulations on packaging pursuant to 49 CFR parts 173, 178, and 179; PENALTY: $85,503; STAFF ATTORNEY: Tracy Gross, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4) COMPANY: Odell Geer Construction Company, Incorporated; DOCKET NUMBER: 1999- 0092-AIR-E; TNRCC ID NUMBER: BF-0057-I; LOCATION: 0.6 miles west of IH-35 on Highway 93, Belton, Bell County, Texas; TYPE OF FACILITY: asphalt concrete plant; RULES VIOLATED: 30 TAC §116.115(c) and Air Permit Number 5645, Special Provision Number 1 and Texas Health and Safety Code (THSC), §382.085(b) by allowing particulate matter emissions and using an improper fuel oil; PENALTY: $4,725; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710- 7826, (254) 751-0335.

(5) COMPANY: Odell Geer Construction Company, Incorporated; DOCKET NUMBER: 1999- 0093-AIR-E; TNRCC ID NUMBER: 90-6084-C; LOCATION: 0.5 miles south of IH-35 on Highway 190 on Stan Schlueter Loop, Killeen, Bell County, Texas; TYPE OF FACILITY: asphalt concrete plant; RULES VIOLATED: 30 TAC §116.115(c) and Air Permit Number 6084A, Special Provisions 1 and 2, and THSC, §382.085(b) by allowing particulate matter emissions and exceeding the permitted limit for organic chloride; PENALTY: $3,000; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Petro-Mex, Incorporated; DOCKET NUMBER: 1999-0216-PST-E; TNRCC ID NUMBER: 34084; LOCATION: 509 East Schunior, Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: 30 TAC §334.7(d) by failing to file notice of the change in release detection and corrosion protection or additional information concerning the USTs with the executive director within 30 days of the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition at the facility; 30 TAC §334.10(b)(1)(A) by failing to develop and maintain all records required by the provisions of 30 TAC Chapter 334; 30 TAC §334.49(a) and the Code, §26.3475(d) by failing to provide corrosion protection for the UST system; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c) by failing to provide proper release detection for the USTs; and 30 TAC §334.105 by failing to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $8,000; STAFF ATTORNEY: John Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Swati Enterprises, Incorporated; DOCKET NUMBER: 1998-0939-PST-E; TNRCC ID NUMBER: 29907; LOCATION: 2615 Commerce Street, Tyler, Smith County, Texas; TYPE OF FACILITY: UST; RULES VIOLATED: 30 TAC §334.7(d)(3) by failing to provide changes or additional information on the UST registration form within 30 days of the occurrence or discovery of the change or addition; and 30 TAC §334.50(a)(1)(A), (b)(1)(A), and (2)(A) by failing to have release detection equipment capable of detecting a release from any portion of the UST system or release detection procedures for tanks and failing to install line leak detectors for pressurized piping; PENALTY: $5,500; STAFF ATTORNEY: John Sumner, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Truth Yearwood and Yearwood Distributing Company, Incorporated; DOCKET NUMBER: 1998-0968-MLM-E; TNRCC ID NUMBER: 38628; LOCATION: 4700 Durazno, El Paso, El Paso County, Texas; TYPE OF FACILITY: UST; RULES VIOLATED: 30 TAC §334.50(b)(1)(B)(i), (2)(A)(i), (d)(1)(B)(ii), (iii)(I), and (2)(D)(ii) by failing to conduct a tank tightness test at least once each year when utilizing a combination of tank tightness testing and inventory control as a release detection method, by failing to provide proper release detection for the piping associated

with UST systems, by failing to equip each separate pressurized line with an automatic line leak detector, by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow through for the month plus 130 gallons, and by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, by failing to maintain measuring equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch; 30 TAC §334.51(b)(2)(A)-(C) by failing to equip the fill pipe of a UST with a tight-fill fitting, adaptor, or similar device which provides a liquid-tight seal during the transfer of regulated substance into the tank, by failing to equip the fill tubes of the tanks with an attached spill container or catchment basin, or enclose them in a liquid-tight manway, riser, or sump, by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §334.7(d)(3) by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.127(a)(1) by failing to register with the commission all aboveground storage tanks (ASTs) in existence on or after September 1, 1989; 30 TAC §324.1 and 40 CFR, §279.22(a), (b)(2), and (c) by storing used oil in units other than tanks, containers, or units approved by the commission, by failing to store used oil in containers that are in good condition and not leaking and by failing to store used oil in containers that are labeled or marked clearly with the words "Used Oil;" 30 TAC §330.1182(e) by failing to store used oil filters in containers and ASTs that are in good condition; 30 TAC §330.1186(f) by failing to store used oil filters in containers that are labeled or marked clearly with the words "Used Oil;" 30 TAC §335.4 and the Code, §26.121 by permitting the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state; PENALTY:$11,000; STAFF ATTORNEY: Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200003161
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 5, 2000

♦ ♦ ♦

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 **June 19, 2000**. 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 June 19, 2000**. 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: Agro-Transfer, Inc.; DOCKET NUMBER: 1999-0663-AIR-E; IDENTIFIER: Air Account Number HN-0320-P and TNRCC Permit Number 23286; LOCATION: Progreso, Hidalgo County, Texas; TYPE OF FACILITY: grain and sorghum transfer site; RULE VIOLATED: 30 TAC §116.115(b), the Act, §382.085(b), and Permit Number 23286, by failing to provide information and data concerning production and operating hours in a file at the site, failing to cease operation when all the air pollution emission capture equipment and abatement equipment was not maintained in good working order and not operating properly during normal facility operations, and failing to notify the TNRCC regional office of an exceedance of 45 days of stoppage of construction within ten working days after the occurrence of the event; and 30 TAC §116.115(c), the Act, §382.085(b), and Permit Number 23286, by failing to equip all loadout devices with drop socks at the drop point during loading operations to minimize fugitive emissions from loadout areas, failing to have all in-plant roads, parking areas, and traffic areas covered with a non-dusty base material, watered, oiled, and/or paved and cleaned as necessary to achieve maximum control of dust emissions, failing to install equipment at all truck receiving and loadout areas with flaps on all doorways while receiving and/or loading products, failing to provide documentation within the allowable time to evaluate the emission rates, and failing to provide records of annual throughputs at the request of TNRCC personnel; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Fara O'Neal, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Andrews Transport, Inc.; DOCKET NUMBER: 2000-0004-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Identification Number 0040091; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: transporter of gasoline products; RULE VIOLATED: 30 TAC §115.221 and the Act, §382.085(b), by failing to utilize Stage I vapor recovery equipment during the transfer of gasoline into the storage container; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: APAC, Inc.; DOCKET NUMBER: 2000-0043-AIR-E; IDENTIFIER: Air Account Number DB-0616-C; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §112.121 and §122.130(b) and the Act, §382.085(b) and §382.054, by failing to submit a Title V abbreviated

application; and 30 TAC §116.115(c) and the Act, §382.085(b), by failing to comply with Air Permit Number 21942; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4) COMPANY: Believers World Outreach Church, Incorporated dba Burchfield Ministries Country Camp; DOCKET NUMBER: 1999-1498-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0450031; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.106(a) and the Act, §341.033(d), by failing to collect and submit water samples for bacteriological analysis; 30 TAC §290.105(a)(2), by exceeding the maximum contaminant level for total coliform; 30 TAC §290.106(b)(1), by failing to take the appropriate number of repeat water samples for bacteriological analysis; and 30 TAC §290.46(e)(1), by failing to operate the water system at all times under the daily supervision of a competent water works operator holding a grade "D" or higher operator's certificate of competency; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Budget Rent-A-Car; DOCKET NUMBER: 2000-0098-AIR-E; IDENTIFIER: Air Account Number EE-0885-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: vehicle rental store; RULE VIOLATED: 30 TAC §114.100(a) and the Act, §382.085(b), by allegedly dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901, (915) 834-4949.

(6) COMPANY: Chemical Lime New Braunfels, Ltd.; DOCKET NUMBER: 2000-0108-AIR-E; IDENTIFIER: Air Account Number CS-0020-O; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: lime manufacturing; RULE VIOLATED: 30 TAC §101.6(b) and the Act, §382.085(b), by failing to generate and maintain documentation in the company files for upset conditions which resulted from damage to the spout shroud; 30 TAC §101.115(c), Permit Numbers 5640 and 7808, and the Act, §382.085(b), by failing to maintain all areas of the property subject to vehicle traffic by application of water or treatment with dust suppressant chemicals as necessary to achieve maximum control of dust emissions; and 30 TAC §116.115(c), Permit Numbers 5640 and 7808, and the Act, §382.085(b), by failing to properly maintain the spout shroud used in the loading of lime dust into trucks resulting in emissions of lime dust; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(7) COMPANY: Colorado Interstate Gas Company; DOCKET NUMBER: 1999-1534-AIR-E; IDENTIFIER: Air Account Number MR-0121-W; LOCATION: Masterson, Moore County, Texas; TYPE OF FACILITY: natural gas processing/compressor station; RULE VIOLATED: 30 TAC §122.122(b) and 122.130, and the Act, §382.054, by failing to submit a Title V abbreviated initial application and continuing to operate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109- 4933, (806) 353-9251.

(8) COMPANY: Continental Cabinets Manufacturing, Inc.; DOCKET NUMBER: 1999-1536- AIR-E; IDENTIFIER: Air Account Number EE-1227-G; LOCATION: Horizon City, El Paso County, Texas; TYPE OF FACILITY: cultured marble and fiberglass manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the Act, §382.054 and §382.085(b), by failing to submit an initial abbreviated federal operating permit application and continuing to operate without authorization; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901, (915) 834-4949.

(9) COMPANY: Equistar Chemicals, L.P.; DOCKET NUMBER: 1999-1480-IHW-E; IDENTIFIER: Industrial Hazardous Waste (IHW) Registration Number 30030 and Permit Number 50117; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §335.431(c), 40 Code of Federal Regulations (CFR) §268.50(c), and IHW Permit Number 50117, by failing to meet the storage limit of one year for hazardous wastes subject to land disposal restrictions; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Duke Long Everyday Food Store, Inc. dba Everyday Food Store No. 5209; DOCKET NUMBER: 2000-0060-PWS-E; IDENTIFIER: PWS Number 2270215; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and the Code, §341.033(d), by failing to collect and submit routine monthly samples for bacteriological analysis; and 30 TAC §290.51 and the Code, §341.041, by failing to pay public health service fees; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(11) COMPANY: John Leininger and Harvest Fellowship Community Church; DOCKET NUMBER: 1999-1550-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program Identification Number 1263; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: church; RULE VIOLATED: 30 TAC §213.4(a), by failing to have received approval prior to commencing construction activities; PENALTY: $900; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(12) COMPANY: Hidalgo County; DOCKET NUMBER: 1999-0695-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1593A; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: solid waste landfill; RULE VIOLATED: 30 TAC §330.253(b)(2) and (3), and (e)(7), by failing to complete final cover within 180 days of the last receipt of waste and have site signs at the entrance gate indicating that the landfill is closed; 30 TAC §330.111 and MSW Permit Number 1593A, by failing to conduct groundwater monitoring, remove all waste along the northwest boundary, demonstrate approval to maintain copies of the permit, site development plan, or other plans at an alternate location, have facility employees and other persons participating in facility operations qualified by training, education, and experience to perform their duties, establish a Citizens Advisory Board to work with the permittee in addressing various issues and concerns raised by the citizens, contract with a licensed professional exterminator within 60 days of issuance of this permit, and provide a plan of action outlining the procedures to be used to identify and provide an alternate water supply; 30 TAC §330.130, by failing to conduct quarterly landfill methane gas monitoring; and 30 TAC §§330.280 - 330.286, by failing to provide financial assurance for closure and post- closure care and failing to adjust the closure cost estimate for inflation; PENALTY: $11,375; ENFORCEMENT COORDINATOR:

Fara O'Neal, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Houston Steel Equipment Company; DOCKET NUMBER: 2000-0016-AIR-E; IDENTIFIER: Air Account Number HX-1861-C; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: office steel cabinet manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and the Act, §382.085(b) and §382.0518(a), by allegedly operating without first obtaining a permit or satisfying the conditions of an exemption from permitting authorization; 30 TAC §115.421(a)(9)(A)(iv) and the Act, §382.085(b), by exceeding the three pounds of volatile organic compound (VOC) per gallon content limit for VOC emissions from the coating of miscellaneous metal parts; 30 TAC §115.426(a)(1)(A) and the Act, §382.085(b), by failing to maintain material safety data sheets on site; and 30 TAC §115.426(a)(1)(B) and (D) and the Act, §382.085(b), by failing to maintain records of the quantity and type of coatings and solvents used and records required by 30 TAC § 115.426(a)(1)(A) and (B) on site for a period of at least two years; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239- 1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: The City of Ingleside; DOCKET NUMBER: 1999-1304-PWS-E; IDENTIFIER: Water Quality Permit Number 10422-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0020401; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10422-001, NPDES Permit Number TX0020401, and the Code, §26.121, by failing to comply with both the state and federal permit limits for the 30-day average total ammonia nitrogen limit of three milligrams per liter (mgl); PENALTY: $3,000; ENFORCEMENT COORDINATOR: Duane Tisdale, (512) 239-0004; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: City of Italy; DOCKET NUMBER: 1999-0450-MWD-E; IDENTIFIER: Expired Water Quality Permit Number 10516-001 and NPDES Permit Number TX0024805; LOCATION: Italy, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.42(a), by failing to submit a permit renewal application; Permit Number 10516-001, and the Code, §26.121, by exceeding the daily average biochemical oxygen demand (BOD_5) concentration limit of 30 mgl and the daily average total suspended solids (TSS) concentration and loading limit of 171 pounds per day, the daily average and maximum flow limit which contributes to violations of the loading limitations for both BOD_5 and TSS, and by continuing to discharge wastewater into waters in the state; and NPDES Permit Number TX0024805, by exceeding the daily average BOD_5 concentration limit of 30 mgl; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: Kaufman and Broad Lone Star, L.P.; DOCKET NUMBER: 2000-0253-EAQ- E; IDENTIFIER: Edwards Aquifer Protection Program Number 1379; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: subdivision; RULE VIOLATED: 30 TAC §213.4(a), by failing to have received approval prior to commencing construction activities; PENALTY: $800; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(17) COMPANY: The City of Kennard; DOCKET NUMBER: 1999-1509-MLM-E; IDENTIFIER: PWS Number 1130011, Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11474-001, and NPDES Permit Number TX0056596; LOCATION: Kennard, Houston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §290.46(i), (m), (p)(3), and (t), by failing to establish a plumbing ordinance, initiate a maintenance program to facilitate cleanliness, improve the general appearance of the facilities and reduce costly repairs, conduct annual inspections of the pressure filter media and internal filter surfaces, and maintain the union at well number one in a watertight condition; 30 TAC §290.43(c)(3), by failing to maintain the integrity of the storage tank overflow valve gasket; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary easement; and TPDES Permit Number 11474-001, 30 TAC §305.125, and the Code, §26.121, by failing to monitor effluent flow rate five times per week and failing to maintain minimum effluent dissolved oxygen concentrations of greater than or equal to four mgl; PENALTY: $2,313; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Koch Pipeline Company, L.P.; DOCKET NUMBER: 1999-0876-AIR-E; IDENTIFIER: Air Account Numbers KH-0011-I, GC-0069-S, SG-0138-T, HJ-0037-L, SP-0005-O, GJ-0355-L, RL-0172-J, BR-0154-W, FJ-0039-S, KA-0069-I, RI-0025-F, BE-0021-R, LK-0045-P, RG-0080-T, NE-0065-N, JG-0086-F, WE-0245-H, MC-0063-K, SK-0519-K, CV-0133-S, GJ-0354-N, UB-0159-W, AB-0429-I, AB-0430-A, DC-0129-H, VC-0122-R, WM-0191-O, BC-0031-N, VC-0121-T, FC-0186-H, SM-0072-J, DK, 0062-A, WE-0240-R, SD-0047-K, BR-0085-O, CV-0122-A, CZ-0181-J, SP-0040-M, 0029842A, and 0033431U; LOCATION: Caldwell, Burleson County, Texas; TYPE OF FACILITY: crude oil storage tanks; RULE VIOLATED: 30 TAC §334.128, §334.22, and the Code, §26.358, by failing to pay the aboveground and underground storage tank fees; 30 TAC §101.27 and the Act, §382.085(b), by failing to pay air emission fees; 30 TAC §101.20(1), §116.110(a), 40 CFR Subpart A §60.7, Subparts Ka and Kb §§60.112a(a)(1)(i)(A) and (D) and b, 60.113a(a)(1)(i)(A) and (B), 60.115(a) and (b), 60.116b(b), and the Act, §382.085(b), by failing to equip Tank Number 28594 at the Viola Station with an internal floating roof or vapor recovery unit, perform annual verification of floating roof seal intergrity or primary and secondary seals and maintain the records for Tank Number 28016 at the Pettus Station, provide notification of construction events, start-ups, shutdowns or malfunctions, meet the requirements of tank seal conditions for Tank Numbers 28102 and 28101 at the Heyser and Dilly Stations, repair the seal gaps at Tank Number 28016, repair the tears, holes, or openings in the seal fabric of Tank Number 28016, inspect the seals on Tank Number 28101 at the Dilly Station, maintain a record of the petroleum liquid stored, the period of storage, and the maximum true vapor pressure of that liquid, equip Tank Numbers 40872 and 28503 with floating roofs, meet the requirements of tank seal conditions for Tank Numbers 28058 and 28100 at the Three Rivers Station, perform visual inspections once every 12 months after initial fills, keep records for two years, and submit reports, perform full internal inspections once every ten years, keep records for two years and submit reports, submit initial control equipment certifications, provide records of and keep for two years storage vessel dimension and capacity and data on the true vapor pressure, and maintain records of the petroleum liquid stored, the period of storage, and the maximum true vapor pressure of that liquid during the respective storage period; 30 TAC §115.114(b) and the Act, §382.085(b), by failing to inspect the seals on Tank Numbers 28585 and 28586 at the Viola Station; and 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by failing to obtain a permit or exemption from

permitting prior to construction and operation of the Dilly Station; PENALTY: $171,570; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Koch Midstream Services Company; DOCKET NUMBER: 1999-1478-AIR-E; IDENTIFIER: Air Account Numbers PE-0046-G, PE-0164-W, and WC-0025-W; LOCATION: Fort Stockton, Pecos County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2)(c), by failing to submit a deviation report; and 30 TAC §122.146(2), by failing to submit annual compliance certifications; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(20) COMPANY: Koch Midstream Processing Company; DOCKET NUMBER: 2000-0163-AIR- E; IDENTIFIER: Air Account Number CZ-0012-K; LOCATION: near McCamey, Crockett County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(2), by failing to submit an annual certification within 30 days prior to the end of the certification period; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(21) COMPANY: B Hari International, Incorporated dba Kwik Serve #3; DOCKET NUMBER: 1999-1458-PST-E; IDENTIFIER: PST Facility Identification Number 0067479; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST); 30 TAC §334.93(a) and (b), by failing to demonstrate financial responsibility; 30 TAC §334.7(a)(1) and the Code, §26.346, by failing to register an UST; and 30 TAC §334.54(d)(1)(B), by failing to permanently remove from service an UST; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(22) COMPANY: City of Lytle; DOCKET NUMBER: 1999-1468-MWD-E; IDENTIFIER: NPDES Permit Number TX0057509 and Water Quality Permit Number 10096-001; LOCATION: Lytle, Atascosa County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: NPDES Permit Number TX0057509, Water Quality Permit Number 10096-001, and the Code, §26.121, by failing to comply with permitted effluent limits; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Eric Reese, (512) 239-2611; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(23) COMPANY: Millennium Rail, Inc.; DOCKET NUMBER: 1999-1230-AIR-E; IDENTIFIER: Air Account Number HH-0008-M; LOCATION: Scottsville, Harrison County, Texas; TYPE OF FACILITY: railcar cleaning, maintenance, and coating; RULE VIOLATED: 30 TAC §116.115(c), the Act, §382.085(b), and Air Permit Number 5295, by failing to store containers of volatile materials in a sheltered area, ensure that railcars containing only compounds listed on the Approved Chemical List are cleaned, immediately provide all railcar cleaning records, and operate the flare six days during the cleaning of railcars containing VOCs; PENALTY: $24,375; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: North Texas Municipal Water District; DOCKET NUMBER: 1999-1505- MWD-E; IDENTIFIER: Water Quality Permit Number 10384-001 and NPDES Permit Number TX0025950; LOCATION: Wylie, Collin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10384-001, NPDES Permit Number TX0025950, and the Code, §26.121, by failing to meet permit limits for ammonia-nitrogen; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(25) COMPANY: Oasis Pipe Line Company Texas L.P.; DOCKET NUMBER: 2000-0076-AIR- E; IDENTIFIER: Air Account Numbers CZ-0026-W and KG-0007-K; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and the Act, §382.085(b), by allegedly having failed to submit an annual certification within 30 days of the end of the certification period; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(26) COMPANY: Penreco; DOCKET NUMBER: 1999-0815-IWD-E; IDENTIFIER: NPDES Permit Number TX0003727 and Water Quality Permit Number 00377; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: petroleum products; RULE VIOLATED: NPDES Permit Number TX0003727, Water Quality Permit Number 00377, and the Code, §26.121, by failing to comply with the daily maximum oil and grease limit of 15 mgl; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Mr. Larry Trotter dba Preferred Auto Sales; DOCKET NUMBER: 2000-0042- AIR-E; IDENTIFIER: Air Account Number DB-5093-C; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by allegedly offering for sale a vehicle with missing or inoperable emission control devices; PENALTY: $720; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469- 6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(28) COMPANY: Signtech USA, Ltd.; DOCKET NUMBER: 1999-1546-IHW-E; IDENTIFIER: Solid Waste Registration Number 39225; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: sign manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(4), by failing to maintain personnel training records and records of the annual reviews of initial training provided for facility personnel and failing to include in the facility's contingency plan the requirements that apply to an UST which is used for emergency spill control; 30 TAC §335.69(a)(2) and (3), by failing to properly label a hazardous waste tank and containers of hazardous waste in storage with the words "hazardous waste" and failing to mark containers of hazardous waste in storage with the dates upon which the accumulation began; 30 TAC §335.69(a)(1)(B), by failing to use appropriate controls and practices to prevent spills and overflows from the hazardous waste tank, its ancillary equipment, and its off-loading valve and by failing to document daily inspections of hazardous waste tank in the operating record of the facility; 30 TAC §335.4, by failing to prevent discharges and spills from a non-hazardous industrial solid waste tank; 30 TAC §335.69(b) and (e), by failing to maintain records which document the facility's compliance with accumulation time limits for storage of hazardous waste in a tank and failing to mark containers with the date on which the amounts of hazardous waste in excess of 55 gallons were allowed to be accumulated in the wash room, the vinyl area, and adjacent to the distillation area; 30 TAC §335.62, by failing to

perform hazardous waste determinations on PM-10 acetate solvent; 30 TAC §335.6(c), by failing to submit subsequent notification for four on-site solid waste management units and for various industrial solid waste streams generated on site; 30 TAC §335.69(d)(2), by failing to properly label containers and to keep containers closed when not adding or removing hazardous wastes accumulated at or near the point of generation; 30 TAC §335.9(a)(1)(G), by failing to keep records which document the location of hazardous waste accumulation areas location at or near the point of generation; 30 TAC §335.10(a) and (b), by failing to include all applicable United States Environmental Protection Agency (EPA) hazardous waste numbers on manifests used for transportation of hazardous waste; and 30 TAC §335.431(c), by failing to identify all applicable EPA hazardous waste numbers on land disposal restriction notifications provided to off-site receiving facilities; PENALTY: $36,375; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(29) COMPANY: Mr. Bill Smalling dba Smalling Interests; DOCKET NUMBER: 1999-1255- EAQ-E; IDENTIFIER: Edwards Aquifer Program Number 99072701; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of an Edwards Aquifer protection plan prior to initiating construction; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(30) COMPANY: Sneed Shipbuilding, Inc.; DOCKET NUMBER: 1999-1578-IHW-E; IDENTIFIER: IHW Identification Number 86273; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: ship building and repair; RULE VIOLATED: 30 TAC §335.6(a), by failing to notify the TNRCC regarding the generation, storage, and disposal of industrial solid waste; 30 TAC §335.9(a)(1), by failing to keep records regarding volumes of industrial solid waste generated, stored, and disposed of on site; 30 TAC §335.62, by failing to perform hazardous waste determinations and classifications of industrial solid waste generated on site; 30 TAC §335.63, by failing to obtain an EPA identification number; 30 TAC §335.69(f)(4) and 40 CFR §262.34(d)(4), by failing to mark containers of hazardous waste with accumulation dates and failing to mark containers of hazardous waste with the words "hazardous waste;" 30 TAC §335.69(f)(2) and 40 CFR §262.34(d)(2), by failing to keep containers of hazardous waste closed and failing to perform weekly inspections of containers storing hazardous waste; 30 TAC §335.431 and 40 CFR §268.7(a), by failing to determine if hazardous waste is restricted from land disposal; and 30 TAC §335.503(a), by failing to classify and code each industrial solid waste generated on site; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898- 3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(31) COMPANY: T&M Management & Spindletop Truck Stop, Inc.; DOCKET NUMBER: 1998-1216-PST-E; IDENTIFIER: Enforcement Identification Number 17234; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.54(d)(1)(B) and §334.55(a)(6), by failing to permanently remove from service the USTs; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703- 1892, (409) 898-3838.

(32) COMPANY: Jaweed Virani dba Star Mart; DOCKET NUMBER: 1999-1449-PST-E; IDENTIFIER: PST Facility Identification Number 0034474; LOCATION: La Marque, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(6) and the Act, §382.085(b), by failing to maintain records of daily inspections; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239- 6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Tosco Marketing Company, Inc.; DOCKET NUMBER: 1999-1567-AIR-E; IDENTIFIER: Air Account Number EE-0799-J; LOCATION: Anthony, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and the Act, §382.085(b), by allegedly dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901, (915) 834-4949.

(34) COMPANY: Ultra Fuel and Oil, L.L.C.; DOCKET NUMBER: 1999-1589-AIR-E; IDENTIFIER: Air Account Numbers EE-2063-F and EE-0866-T; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and the Act, §382.085(b), by allegedly dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901, (915) 834-4949.

(35) COMPANY: Union Pacific Railroad; DOCKET NUMBER: 1999-1565-AIR-E; IDENTIFIER: Air Account Number EE-1354-V; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: loading and unloading dock for railcars; RULE VIOLATED: 30 TAC §111.149(b), §101.4, and the Act, §382.085(b), by allegedly using a lot for more than five parking spaces without being paved or uniformly covered with gravel which caused air contaminants to be emitted into the atmosphere in such a concentration and duration as to create a dust nuisance; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901, (915) 834-4949.

(36) COMPANY: Doyle Foster dba Wier Country Store; DOCKET NUMBER: 1999-1403-PST- E; IDENTIFIER: PST Facility Identification Number 22117; LOCATION: Wier, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475, by failing to conduct a release detection method on pressurized piping; 30 TAC §334.10(b)(1), by failing to present documentation of monthly inventory reconciliation of daily inventory control records; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475, by failing to test line leak detectors at least once per year for performance and reliability; 30 TAC §334.93, by failing to demonstrate the required financial assurance for corrective action and third party liability; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475, by failing to demonstrate the presence of an overfill prevention device on each tank; and 30 TAC §334.7(d)(3), by failing to provide an amended registration to reflect the method of release detection being used and the installation of spill equipment; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Larry King, (512) 339-3795; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200003260

Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 9, 2000

♦ ♦ ♦

Notice of Public Hearing (Chapter 290)

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 290.

The proposed amendments to Chapter 290, concerning Public Drinking Water, would implement 40 Code of Federal Regulations Part 141, Subpart O, which requires states with primary enforcement responsibility of safe drinking water programs to adopt federal consumer confidence report requirements.

A public hearing on this proposal will be held in Austin on June 12, 2000, at 10:00 a.m. at the TNRCC complex in Building F, Room 2210, located at 12100 Park 35 Circle. 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 will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lisa Martin, MC 205, TNRCC, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 1999-065-290-WT. Comments must be received by 5:00 p.m., June 19, 2000. For further information, please contact Bruce Moulton, Policy and Regulations Division, (512) 239-4809.

TRD-200003210
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2000

♦ ♦ ♦

Notice of Public Hearing (Chapter 321)

The Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 321, Control of Certain Activities by Rule. This notice is given under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed rules would establish the parameters for determining, in accordance with House Bill (HB) 801, whether a particular concentrated animal feeding operation (CAFO) requires an individual permit because it is located in the watershed of a sole-source surface drinking water supply and is located sufficiently close to an intake of a public water supply system in the sole-source surface drinking water supply so that contaminants discharged from the CAFO could potentially affect the public drinking water supply. In this regard, the proposed rules would establish the protection zone, which is the primary parameter in determining whether a CAFO is so located. The proposed rules require certain application information to be submitted in order to determine if the CAFO is located within the "protection zone" of a sole-source surface drinking water supply.

A public hearing on this proposal will be held in Austin on June 15, 2000 at 10:00 a.m. in Building F, Room 3202A at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in the 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 before the hearing and will answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, 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., June 19, 2000, and should reference Rule Log Number 1999-030-321-AD. For further information, please contact Ray Austin, Policy and Regulations Division, (512) 239-6814.

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-200003213
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2000

♦ ♦ ♦

Notice of Water Rights Application

WILLIAM A. ANSLEY, JR, HUDGINS DUNNAM ANSLEY, MORROW LOU ANSLEY SIMS, JULIA ANN ANSLEY VIDAL, D'ARCY MELL ANSLEY POULSON AND CRAIG SIMS, 1309 North Alabama Road, Wharton, Texas 77488, applicants, seek a Water Use Permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicants seek authorization to divert not to exceed 184 acre-feet of water per annum from West Bernard Creek, tributary of the San Bernard River, Brazos-Colorado Coastal Basin for irrigation of 85 acres out of four tracts of land totaling 154.21 acres in the Isham B. Phillips League, Abstract No. 52, Wharton County approximately 2.2 miles Southeast of Hungerford, Texas. Ownership of the land to be irrigated by applicants is evidenced by Warranty Deed recorded in Volume 545, Page 745, Volume 43, Page 362, Volume 406, Page 695, and Volume 473, Page 575 in the Official Records of Wharton County. Although each of the four tracts have different individual owners, the requested permit, if granted, will not include a specific amount of water for each tract, but a total amount for the aforesaid 154.21 acres. The water will be diverted from West Bernard Creek at a maximum rate of 3.825 cfs (1717 gpm) at a point S 23.25° W, 16,800 feet from the East corner of the Isham B. Phillips League, Abstract No. 52, also being at 29.39° N Latitude and 96.04° W Longitude. Water diverted but not consumed will be returned to West Bernard Creek downstream of the proposed diversion point. The return points are described as follows: 1. At a point on the creek that is S 22° W, 16,900 feet from the aforesaid league corner, also being at 29.39° N Latitude and 96.037° W Longitude. The estimate annual amount of return flow to this point is 9 acre-feet of water. 2. At a point on a drainage

ditch that is a tributary of the creek that is S 21° W, 21,000 feet from aforesaid league corner, also being at 29.38°N Latitude and 96.04°W Longitude. The estimated annual amount of return flow to the this point is 9 acre-feet of water.

MARIE E. SIKORA, 1610 Briar Lane Apt 2A, Wharton, Texas 77488, applicant, seeks a Water Use Permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicant seeks authorization to divert not to exceed 33 acre-feet of water per annum from West Bernard Creek, tributary of the San Bernard River, Brazos-Colorado Coastal Basin for irrigation of 15 acres out of a 21.512 acre tract in the David Hamilton League, Abstract No. 26, Wharton County approximately 2.7 miles southeast of Hungerford, Texas. Ownership of the land to be irrigated by the applicant is evidenced by Warranty Deeds recorded in Volume 817, Page 309 at the in the official; records of Wharton County. The water will be diverted from West Bernard Creek at a maximum rate of 1.559 cfs (700 gpm) at a point S 38° W, 16,700 feet from the East corner of the David Hamilton League, Abstract No. 26, also being at 29.39° N Latitude and 96.03° W Longitude. Water diverted but not consumed will be returned to West Bernard Creek downstream of the proposed diversion point. The return point is S 35.58° W, 16,400 feet from the aforesaid league corner, also being at 29.39° N Latitude and 96.026° W Longitude. The estimate annual amount of return flow to this point is 3 acre-feet of water.

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 any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200003270
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2000

♦ ♦ ♦

Notice of Water Quality Applications.

The following notices were issued during the period of March 31, 2000 through May 8, 2000.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUASOURCE UTILITY, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14117-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The plant site is located approximately 0.75 mile southwest of the intersection of West Little York (Fisher) Road and Brittmore Road in Harris County, Texas.

CITY OF AUSTIN, DEPARTMENT OF AVIATION has applied for a renewal of Permit No. 13455-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 294,625 gallons per day via surface irrigation of 132 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The disposal area is located on the golf course of on Austin-Bergstrom Airport approximately 2.4 miles southeast of the intersection of U.S. Highway 183 and State Highway 71 in Travis County, Texas.

CITY OF BAIRD has applied for a renewal of TNRCC Permit No. 10037-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located immediately east of the TP Lake dam and immediately south of the Texas-Pacific Railroad right-of-way in Callahan County, Texas.

CITY OF BEASLEY has applied for a renewal of TPDES Permit No. 11450-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 3,000 feet east of the intersection of U.S. Highway 59 (Southwest Freeway) and Farm-to-Market Road 1875, approximately 3,000 feet west-southwest of the intersection of U.S. Highway 59 and Eslieb Road, on the frontage of Emerson Road south of the City of Beasley in Fort Bend County, Texas.

CITY OF BLANCO has applied for a renewal of TNRCC Permit No. 10549-001, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 3,000 feet southwest of the intersection of Farm-to-Market Road 1623 and U.S. Highway 281, on the north bank of the Blanco River in the City of Blanco in Blanco County, Texas.

CITY OF EVANT has applied for a renewal of TNRCC Permit No. 11011-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. This application was submitted to the TNRCC on September 1, 1999. The plant site is located approximately 200 feet south of Live Oak Street near the southeast corner of the City of Evant in Coryell County, Texas.

FORT HANCOCK WATER CONTROL AND IMPROVEMENT DISTRICT #1 has applied for a renewal of Permit No.11173-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 33,000 gallons per day via evaporation. The wastewater treatment facilities and disposal site

are located on the north side of and adjacent to State Highway 20, approximately one mile southeast of Fort Hancock in Hudspeth County, Texas.

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of Permit No. 11477-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day via surface irrigation of 122 acres of a golf course. The draft permit authorizes the disposal of treated domestic wastewater at an annual average flow not to exceed 285,000 gallons per day via surface irrigation of 122 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities are located approximately 0.5 mile north of Stewart Road and 0.25 mile east of 12-Mile Road on Galveston Island. The disposal site is located at the Galveston Country Club which is immediately northwest of the intersection of Stewart Road and 12-Mile Road on Galveston Island in Galveston County, Texas.

CITY OF HOLLAND has applied for a renewal of TNRCC Permit No. 10897-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10897-001 will replace the existing TNRCC Permit No. 10897-001. The plant site is located approximately 0.5 mile east of the intersection of Travis Street and U.S. Highway 95 in Bell County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-112, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 820,000 gallons per day. The plant site is located south of Huffman-Eastgate Road, approximately 6,500 feet west of the intersection of Farm-to-Market Road 1960 and Huffman- Eastgate Road in Harris County, Texas.

CITY OF KOSSE has applied for a renewal of TPDES Permit No. 11405-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 150 feet southeast of the intersection of Jackson and Tulip Streets in the City of Kosse in Limestone County, Texas.

LUTHERAN OUTDOORS MINISTRY OF TEXAS, INC. has applied for a major amendment to TNRCC Permit No. 12168-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 21,000 gallons per day to a daily average flow not to exceed 35,000 gallons per day. This application was submitted to the TNRCC on August 4, 1999. The plant site is located approximately 1.8 miles northeast of the intersection of Farm-to- Market Road 155 and U.S. Highway 77 in Fayette County, Texas.

CITY OF MANVEL has applied for a renewal of TPDES Permit No. 11251-001, 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 northeast of the intersection of State Highway 6 and Farm- to-Market Road 1128 in the City of Manvell in Brazoria County, Texas.

CITY OF MARSHALL has applied for a major amendment to TNRCC Permit No. 10583-002. The proposed amendment would authorize to change the effluent limitations from 2 mg/l to 5 mg/l for Ammonia Nitrogen (NH3-N) with a change from 6 mg/l to 5 mg/l for minimum dissolved oxygen (DO). The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,910,000 gallons per day. Also, the permittee is requesting to increase 2-hour peak flow from 15,000,000 gallons per day to 18,000,000 gallons per day and change the method of disinfection from chlorination to an ultra violet light disinfection system. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,910,000 gallons per day. The plant site is located southeast of the City of Marshall, approximately 1,800 feet southeast of the intersection of Interstate Highway 20 and Five Notch Road in Harrison County, Texas.

NEW BRAUNFELS UTILITIES has applied for a renewal of TNRCC Permit No. 10232-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,100,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,100,000 gallons per day. The plant site is located at 1922 Kuehler Road, approximately 0.5 mile east of Farm-to-Market Road 725 and 0.5 mile south of Interstate Highway 35 off Kuehler Avenue in the City of New Braunfels in Comal County, Texas.

CITY OF ROMA has applied for a renewal of TNRCC Permit No. 11212-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. This application was submitted to the TNRCC on August 30, 1999. The plant site is located south of U.S. Highway 83 at West 6th Street in the City of Roma in Starr County, Texas.

CITY OF ROMA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 11212-003, to authorize the discharge of treated water treatment plant filter backwash at a daily average flow not to exceed 150,000 gallons per day. The plant site is located approximately 1,300 feet northwest of the intersection of U.S. Highway 83 and U.S. Customs Toll Bridge Road (in the City of Roma), and approximately 1,100 feet north of the intersection of the same U.S. Customs Toll Bridge Road and Mexico in Starr County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. 11791-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1.2 miles west of U.S. Highway 59, on the south side of Greens Bayou in Harris County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TNRCC Permit No. 11311-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on the northwest side of Interstate Highway 20 at a point approximately 0.25 mile west of the Parker County line in Palo Pinto County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. 12255-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,100 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. This application was submitted to the TNRCC on August 9, 1999. The wastewater treatment facilities and disposal site are located within Russell Park off County Road 262 approximately 2.1 miles south-southeast of the intersection of County Road 262 and Farm-to-Market Road 3405 in Williamson County, Texas.

U.S. DEPARTMENT OF AGRICULTURE has applied for a renewal of Permit No. 12211-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via surface irrigation of 2.5 acres of grassland. The wastewater treatment facilities and disposal area are located just below the dam of Red Hills Lake which is 0.75 mile east of State Highway

87 on Forest Service Road 116 and three miles northeast of the City of Milam in Sabine County, Texas.

CITY OF YOAKUM has applied for a major amendment to TNRCC Permit No. 10463-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to a daily average flow not to exceed 990,000 gallons per day, to authorize to increase the allowable 2-hr. peak flow and to authorize composting of sludge on the wastewater treatment plant site. The plant site is located on the west side of Dunn Street and approximately one mile southwest of its intersection with State Highway 111 in the City of Yoakum in Dewitt County, Texas.

TRD-200003269
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2000

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 4, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of North Texas Cellular, Inc., doing business as Brazos Global Communications for a Service Provider Certificate of Operating Authority, Docket Number 22507 before the Public Utility Commission of Texas.

Applicant intends to provide a full range of telecommunications service which includes, but is not limited to, basic local telecommunications service, DSL, and Internet service.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Abilene, Dallas, and Wichita Falls Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 24, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200003205
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2000

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On May 3, 2000, Southwestern Bell Telephone Company and Capital Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22493. 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 ten 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 22493. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22493.

TRD-200003253
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Privacy Manager Service Pursuant to P.U.C. Substantive Rule §26.215 on or after May 8, 2000, Docket Number 22480.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22480. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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.

TRD-200003170
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 2, 2000, FairPoint Communications Corporation and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interim interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22491. 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 interim interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22491. 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 June 1, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22491.

TRD-200003156
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On April 28, 2000, 1-800-Reconex, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22492. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22492. 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 June 1, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22492.

TRD-200003155
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 3, 2000, Excel Telecommunications and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22498. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22498. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22498.

TRD-200003254
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 3, 2000, Adelphia Business Solutions of Texas, LP and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interim interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22499. 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 interim interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22499. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22499.

TRD-200003255
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 3, 2000, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and United Telephone Company of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22500. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22500. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22500.

TRD-200003267
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 3, 2000, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Central Telephone Company of Texas, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22501. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22501. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22501.

TRD-200003268
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 4, 2000, Southwestern Bell Telephone Company and Callnet Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22503. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22503. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22503.

TRD-200003256
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 4, 2000, Level 3 Communications, LLC and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interim interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22504. The joint application and the underlying interim interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interim 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 interim interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22504. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22504.

TRD-200003257
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreements

On May 4, 2000, XIT Telecommunications and Technology, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22505. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22505. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22505.

TRD-200003258
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 4, 2000, TSR Wireless, LLC and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22506. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22506. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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 22506.

TRD-200003259
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 5, 2000, Grande River Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22508. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22508. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22508.

TRD-200003271
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 5, 2000, Southwestern Bell Telephone Company and NPCR Inc., doing business as Nextel Partners, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22509. The joint application and the underlying interconnection agreement are

available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten 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 22509. 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 June 2, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's 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 22509.

TRD-200003272
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2000

♦ ♦ ♦

Requesting List of Issues

This project will amend the Texas Universal Service Fund Rules (Public Utility Regulatory Act §§56.021 - 56.028, Texas Utilities Code Annotated §§26.401 - 26.420 (Vernon 1998 and Supp. 2000)) (PURA). Project Number 22472, Rulemaking to Amend Texas Universal Service Fund Rules, has been established for this proceeding.

Interested parties are requested to file a list of issues or questions (16 copies) with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 2, 2000. The list of issues should reference Project Number 22472.

Questions regarding this notice should be referred to Melene Malone, Office of Policy Development, at (512) 936-7247. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200003239
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2000

♦ ♦ ♦

Texas Department of Public Safety

Public Hearing Notice

The Texas Department of Public Safety in accordance with Administrative Procedure and Texas Register Act, Texas Government Code, §2001 et seq., and Texas Transportation Code, Chapter 521, is holding a public hearing on Tuesday, May 30, 2000, at 10:00 a.m. in the Criminal Law Enforcement Auditorium of the Texas Department of Public Safety, 6100 Guadalupe Street, Austin, Texas.

The purpose of the hearing is to receive comments from all interested persons regarding adoption of amendments to Administrative Rules §15.24 and §15.30 regarding Application Requirements–Original, Renewal, Duplicate, Identification Certificates, proposed for adoption under the authority of Texas Transportation Code, Chapter 521. The proposed rules were published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2300).

The hearing is in response to requests for public hearing received from State Representative Miguel "Mike" D. Wise; the State Bar of Texas Committee on Laws Relating to Immigration and Nationality; the National Council of La Raza and The Texas Immigrant and Refugee Coalition.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Letters should be addressed to Angela Parker, Director of Hearings, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0380.

Individual comments may be limited to five minutes in duration, depending on the number of attendees.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact Frank Elder at (512) 424-2768, three work days prior to the meeting so that appropriate arrangements can be made.

TRD-200003264
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: May 9, 2000

♦ ♦ ♦

Texas Real Estate Commission

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Real Estate Commission (Commission) announces its Request

for Proposals (RFP) from qualified independent consultants to provide the Commission with internal auditor related consulting services by performing a risk assessment to develop a four year audit plan using techniques to identify risk factors that affect the Commission's major systems and controls, including but not limited to management and administration, finance and accounting, real estate regulation, licensing and registration, enforcement, and information services, and provide written documentation of the assessment. The risk assessment will also include the Commission's compliance with the Public Funds Investment Act (Government Code, §2256.005(m)) and the legislative requirement for an internal auditor if revenues exceed $10 million per fiscal year (Article 6252-5d, V.T.C.S, recodified as Texas Government Code, Chapter 2102.006). The successful respondent will be expected to begin performance of the contract on or about July 17, 2000.

Contact: Parties interested in submitting a proposal should contact Sandy Jones, Purchaser, at the Texas Real Estate Commission, 1101 Camino La Costa, Room 107, Austin, Texas 78752, (512) 465-3922, to obtain a complete copy of the RFP. The Commission will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address between the hours 9:00 a.m. and 5:00 p.m. Central Zone Time (CZT) on or after May 9, 2000. The Commission will also make the RFP available electronically on the Texas Marketplace on Tuesday, May 9, 2000, 2:00 p.m. The web site address is **www.marketplace.state.tx.us**. All written inquiries must be received at the above referenced address prior to 2:00 p.m., CZT on Wednesday, May 31, 2000. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax questions to (512) 465-3908, to ensure timely receipt.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received in the Purchaser's Office no later than 3:00 p.m. CZT, on June 8, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria set forth in the RFP. The Administrator will make the final decision.

The Commission reserves the right to accept or reject any or all proposals submitted. The Commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the execution of a contract.

Disclosure: The consulting services sought by the Commission relate to services previously provided by a consultant.

Anticipated Schedule of Events: *Issuance of RFP* - May 8, 2000, 3:00 p.m. CST; *Questions Due* - May 31, 2000, 2:00 p.m. CST; *Proposals Due* - June 8, 2000, 3:00 p.m. CST; *Contract Execution* - July 10, 2000; *Commencement of Work* - July 17, 2000.

TRD-200003246
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: May 8, 2000

♦ ♦ ♦

Texas Workforce Commission

Request for Proposals

RAPID RESPONSE VENDOR LIST

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission is soliciting project proposals to operate Workforce Investment Act (WIA) Rapid Response Services on behalf of the state. The emphasis of this Request for Proposal (RFP) is to seek new and capable potential service providers. All former and current vendors are encouraged to respond to this RFP. All proposals will be reviewed and evaluated and if determined to be responsive to the requirement of the RFP, will be placed on the State Rapid Response Vendor List. This list is a tool to expedite the procurement of the rapid response services in the local workforce service delivery areas.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to issue this RFP and award contracts under the Labor Code, §302.002(b), and the TWC Financial Manual for Grants and Contracts.

C. ELIGIBLE APPLICANTS

Applicants submitting proposals must complete a Request for Proposal (RFP) Package and provide required documentation as requested in the application in order to be considered eligible.

D. PROJECT SCHEDULE

The application submission deadline is, June 19, 2000. The anticipated effective date of this Vendor's List is July 20, 2000.

E. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Demonstrated Effectiveness of the Contractor, 40 points; Experience of Key Personnel, 30 points; Organizational/Management Systems, 10 points; Comprehensiveness of Proposed Services, 20 points.

F. SELECTION AND NOTIFICATION PROCESS

Proposals will be evaluated and reviewed by TWC. If determined to be responsive to the requirements of this RFP, applicant will be placed on the State Rapid Response Vendor List. Applicants will be notified by TWC of their being placed on the approved Vendors List July 20, 2000.

G. TWC'S CONTACT PERSON

For further information and to request a package for RFP # GPFP 00-08, contact Bill Turner, Program Administrator, Texas Workforce Commission, Room 440T, 101 East 15th Street, Austin, Texas, 78778-0001, (512) 936-3203, fax (512) 936-3420, e-mail address bill.turner@twc.state.tx.us.

TRD-200003306
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Filed: May 10, 2000

♦ ♦ ♦

Request for Qualifications for Selection of Professional Architectural/Engineering Services

The Texas Workforce Commission (TWC), Facilities, Construction and Maintenance Department, 101 East 15th Street, Room 226T, Austin, Texas 78778-0001, issues this request for statement of interest and qualifications (RFQ) for the purpose of selecting a professional architectural/engineering (A/E) firm for a Heating, Ventilation and

Air Conditioning equipment replacement project at the TWC facility at 616-618 North Santa Fe Street in El Paso, Texas.

The Texas Workforce Commission intends to remove and replace the Heating, Ventilation and Air Conditioning equipment at the cited TWC facility. Award of professional services prime contract to the successful vendor will require developing the scope of the project, developing bid documents, drawings and specifications, providing oversight and project administration. Fee will be based on the Professional Services Procurement Act, Chapter 2254, Government Code. The following work is being considered for the project (this list is not exhaustive, but is intended to give a reasonable understanding of the scope of the project):

Design plans and specifications for removal of existing heating and air conditioning equipment (chiller, air-cooled condensers, air handlers, chilled water piping and boiler).

Design plans and specifications for the installation of new packaged condenser units, DX-coil air handlers with hot water heat and boiler.

Design plans and specifications for installation of a new digital energy management system.

Design, document and monitor abatement of all asbestos containing materials associated with the existing HVAC system.

Design emergency auxillary (portable) HVAC requirements required to maintain building temperatures during HVAC removal and installation. Buildings to be maintained between 72º and 76º Fahrenheit for the months of March through November. Heating shall be maintained between 68º and 72º Fahrenheit between the months of December and February.

The estimated budget for this project is $180,000.00 which includes construction costs, architectural fees, contingencies, and other project related services. The building is single story and approximately 16,000 square feet of office space. If you are awarded this professional services contract you will be required to develop the scope of the project, develop bid documents, drawings and specifications, provide oversight and project administration.

If your firm is interested in being considered to serve as prime professional services contractor for this project, you must provide information about your company and associates who will perform professional services under this contract. Please contact the following person to obtain an application questionnaire (a company brochure or project proposal can be submitted to the following address in lieu of the questionnaire):

Texas Workforce Commission

Attention: Jim McKaskle

101 East 15th Street, Room 226T

Austin, Texas 78778-0001

Selection will be based on respondent's demonstrated experience on projects of similar size and complexity; quality of design; budgetary experience and responsibility; the size, availability, expertise and experience of respondent's staff; respondent's workload, to the extent it might impact on the design schedule for this project; respondent's willingness to accept owner-required design, contract and construction standards; and respondent's organization and management, including type of ownership, number of years respondent has been established, and the experience of respondent's members in working together as a team.

The Texas Workforce Commission recognizes the benefits of aiding and stimulating the growth of small disadvantaged and small women-owned business enterprises, and therefore requires that your firm consider in its proposal the participation of qualified, certified Historically Underutilized Businesses (HUBs) as subcontractors. It is TWC's intention that qualified HUBs receive a minimum of twenty percent (20%) of this professional services contract. If your firm is not certified as a HUB, your response to this RFQ should include a plan for utilization of HUBs in providing architectural/engineering services to TWC in connection with any contractual agreement awarded you as a result of this RFQ.

The Texas Workforce Commission in no way obligates itself to enter into any contract or agreement, and reserves the right to reject any or all proposals. The Texas Workforce Commission reserves the right to enter into negotiations with any and all respondents hereto. Any respondent hereto may be requested to appear for an in-person interview.

To be considered, your response must be received at the above address on or before 5:00 p.m, June 15, 2000. Any questions concerning this request may be directed to Jim McKaskle at (512) 305-9693.

TRD-200003248
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: May 9, 2000

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

❒ **Change of Address**
(Please fill out information below)

❒ **Paper Subscription**
❒ One Year $150 ❒ Six Months $100 ❒ First Class Mail $250

❒ **Back Issue ($10 per copy)**

_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME _____

ORGANIZATION_____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

❒ **Bill Me** ❒ **Payment Enclosed**

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.
Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additonal entry offices
_____
_____