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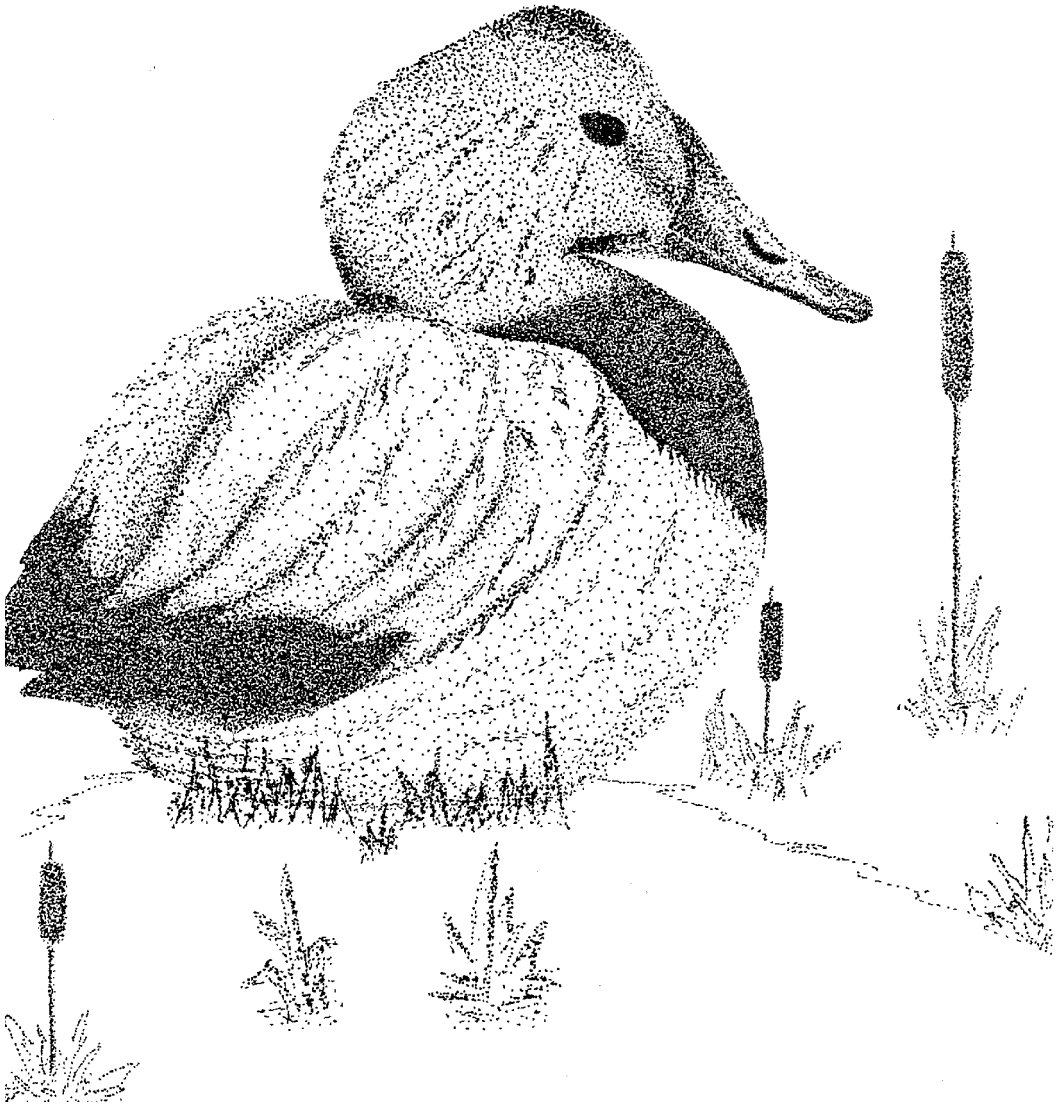

This month's front cover artwork:

Artist: *Christina Luna*
8th Grade
Dr. Armando Cuellar M.S.

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*.

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 22607199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
Secretary of State - Gwyn Shea
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WITHDRAWN RULES

ADOPTED RULES

Public Utility Commission of Texas

The University of Texas System

Texas Water Development Board

Texas Workforce Commission

Open Meetings

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

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

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

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 12, 2002.

Appointed to the Communities in Schools Advisory Committee, pursuant to HB 2879, 77th Legislature, for terms at the pleasure of the Governor, Linda G. Mora of San Antonio, Rosa Linda Navejar of Fort Worth, Mary Margaret Rucker of Nassau Bay.

Appointments for April 17, 2002.

Appointed to the Heart of Texas Regional Review Committee for terms to expire on January 1, 2003, Jacqueline A. Levingston of Groesbeck (reappointed), Charles D. Turner of Hewitt (reappointed), J. W. (Jay) Thiele of Whitley (reappointed), Ennis DeGrate, Jr. of Golinda (reappointed), Edith Omberg of Hillsboro (reappointed), Luke Ward of Fairfield.

Appointed to the Heart of Texas Regional Review Committee for terms to expired on January 1, 2004, Robert L. Campbell of Crawford, Norman D. Erskine of Marlin, Cleon Larry Ivy of Fairfield, David Lester Keller of Walnut Springs, Elenor F. Holmes of Groesbeck, Jess W. Taylor, Jr. of Meridian.

Rick Perry, Governor

TRD-200202444

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Appointments

Appointments for April 19, 2002.

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire on July 28, 2005, James Olan Webb of Silsbee (replacing Michael Pierce of Beaumont who resigned).

Appointed to the Lower Neches Valley Authority Board of Directors for terms to expire on July 28, 2007, Lonnie Arrington of Beaumont (reappointed), Brian Babin, DDS of Woodville (reappointed), Lila Long Pond of Port Neches (replacing R. C. Aldrich of Nome whose term expired).

Appointed to the Texas Board of Professional Land Surveying for terms to expire on January 31, 2007, Arthur W. "Art" Osborn of Tyler (reappointed), Raul Wong, Jr. of Dallas (reappointed).

Appointments April 22, 2002.

Appointed to the One-Call Board for a term to expire on August 31, 2002, Jack Gerhardt Blaz of Dallas (replacing Nancy Sullivan who resigned).

Appointed to the One-Call Board for a term to expire on August 31, 2003, Ernest Aliseda of Edinburg (replacing Ashley Smith who resigned).

Appointed to the One-Call Board for terms to expire on August 31, 2004, Joseph F. Berry of Pearland (replacing David Hooper of Corpus Christi whose term expired), Janet W. Holland of Mineral Wells (reappointed), Craig Reid Thompson of Cypress (replacing Charles Boyd of Dallas whose term expired).

Appointed to the Texas Workers' Compensation Commission for a term to expire on February 1, 2007, Richard Allen Smith of Bryan (replacing James Lowrey of Freeport whose term expired).

Rick Perry, Governor

TRD-200202489

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Executive Order

RP 13

Relating to community-based alternatives for people with disabilities.

WHEREAS, The State of Texas is committed to providing community-based alternatives for people with disabilities and recognizes that such services and supports advance the best interests of all Texans; and

WHEREAS, it is imperative that consumers and their families have a choice from among the broadest range of supports to most effectively meet their needs in their homes, community settings, state facilities or other residential settings; and

WHEREAS, as Governor, I am committed to ensuring that people with disabilities have the opportunity to enjoy full lives of independence, productivity and self-determination; and

WHEREAS, working with the Texas Legislature last session as Governor, I signed legislation totaling $101.5 million dollars in general revenue to expand community waiver services; and

WHEREAS, also last session, I signed legislation promoting independence for people with disabilities and directing agencies to redesign service delivery to better support people with disabilities; and

WHEREAS, programs such as Community Based Alternatives, Home and Community-based Services, and other community support programs provide opportunities for people to live productive lives in their home communities; and

WHEREAS, accessible, affordable and integrated housing is an integral component of independence for people with disabilities; and

WHEREAS, Texas recognizes the importance of keeping children in families, regardless of a child's disability, and support services allow families to care for their children in home environments;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Review of State Policy. The Texas Health and Human Services Commission ("HHSC") shall review and amend state policies that impede moving children and adults from institutions when the individual desires the move, when the state's treatment professionals determine that such placement is appropriate, and when such placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others who are receiving state-supported disability services.

Promoting Independence Plan. The Health and Human Services Commission shall ensure the Promoting Independence Plan is a comprehensive and effective working plan and thorough guide for increasing community services. HHSC shall regularly update the plan and shall evaluate and report on its implementation.

In the Promoting Independence Plan, HHSC shall report on the status of community-based services. In the plan, HHSC shall:

1. update the analysis of the availability of community-based services as a part of the continuum of care;

2. explore ways to increase the community care workforce;

3. promote the safety and integration of people receiving services in the community; and

4. review options to expand the availability of affordable, accessible and integrated housing.

Housing. The Health and Human Services Commission shall incorporate the efforts of the Texas Department of Housing and Community Affairs ("TDHCA") to assure accessible, affordable, and integrated housing in the recommendations of the Texas Promoting Independence Plan.

The Texas Department of Housing and Community Affairs shall provide in-house training of key staff on disability issues and technical assistance to local public housing authorities in order to prioritize accessible, affordable, and integrated housing for people with disabilities.

The Texas Department of Housing and Community Affairs and HHSC shall maximize federal funds for accessible, affordable, and integrated housing for people with disabilities. These agencies, along with appropriate health and human services agencies, shall identify, within existing resources, innovative funding mechanisms to develop additional housing assistance for people with disabilities.

Employment. The Health and Human Services Commission shall direct the Texas Rehabilitation Commission and the Texas Commission for the Blind to explore ways to employ people with disabilities as attendants and review agency policies so they promote the independence of people with disabilities in community settings.

The Health and Human Services Commission shall coordinate efforts with the Texas Workforce Commission to increase the pool of available community-based service workers and to promote the new franchise tax exemption for employers who hire certain people with disabilities.

Families. The Health and Human Services Commission shall work with health and human services agencies to ensure that permanency planning for children results in children receiving support services in the community when such a placement is determined to be desirable, appropriate, and services are available.

The Health and Human Services Commission shall move forward with a pilot to develop and implement a system of family-based options to expand the continuum of care for families of children with disabilities.

Selected Essential Services Waiver. Dependent on its feasibility, HHSC shall direct the Texas Department of Mental Health and Mental Retardation to implement a selected essential services waiver, using existing general revenue, in order to provide community services for people who are waiting for the Home and Community-based Services waiver.

Submission of Plan. The Health and Human Services Commission shall submit the updated Texas Promoting Independence Plan to the Governor, the Lieutenant Governor, the Speaker of the House, and the appropriate legislative committees no later than December 1st each even numbered year, beginning with December 1, 2002.

All affected agencies and other public entities shall cooperate fully with the Health and Human Services Commission during the research, analysis, and production of this plan. The plan should be made available electronically.

This executive order complements GWB 99-2 and supersedes all previous executive orders on community-based alternatives for people with disabilities. This order shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 18th day of April, 2002.

Rick Perry, Governor

TRD-200202445

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Executive Order

RP 14

Designating Texas A&M University as the Military College of Texas.

WHEREAS, Texas A&M University has consistently provided a substantial number of highly qualified, long-serving leaders in the Armed Forces, including over 225 generals and admirals who have attended Texas A&M during the past 125 years; and

WHEREAS, the quality of the military leaders produced by Texas A&M is in part the result of the rigorous military environment and the long-standing close support relationship between the Corps of Cadets and the Reserve Officer Training Corps (R.O.T.C.) personnel who serve as effective leadership role models and mentors; and

WHEREAS, in recognition of the quality of the young leaders produced by Texas A&M, the United States Department of Defense and the military services have traditionally maintained special relationships with the university, including the policy of granting active duty service in the Army to graduates of the colleges who desire such service and who are recommended for such service by their R.O.T.C. professors of military science; and

WHEREAS, Texas A&M has demonstrated an ability to adapt its systems and operations to changing conditions in, and requirements of, the Armed Forces without compromising the quality of leaders produced and without interruption of the close relationship between the university and the Department of Defense; and

WHEREAS, the largest non-military academy corps of cadets in the nation is maintained by Texas A&M which commissions more officers annually than any other school except for the three major service academies, and

WHEREAS, Texas A&M has been designated by federal law as one of six "Senior Military Colleges" in the United States, establishing the university as one of the nation's premier military institutions;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Texas A&M University is designated the Military College of Texas.

This executive order supersedes all previous orders and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 19th day of April, 2002.

Rick Perry, Governor

TRD-200202518

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0492

Mr. Felipe Alanis, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Re: Whether, with respect to a contract valued at $25,000 or more in the aggregate for a twelve-month period, a school district may participate in a registered political subdivision corporation created under section 304.001 of the Local Government Code, and related questions. (RQ-0453-JC)

S U M M A R Y

With respect to a contract valued at $25,000 or more in the aggregate for a twelve-month period, a school district may not participate in a political subdivision corporation established under section 304.001 of the Local Government Code. See Tex. Educ. Code Ann. §44.031(a) (Vernon Supp. 2002); Tex. Loc. Gov't Code Ann. §304.001(b), (d) (Vernon Supp. 2002).

Opinion No. JC-0493

Mr. Robert J. Huston Chair, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087.

Re: Applicability of new requirements for portable facilities and concrete crushers imposed by amendments to the Texas Clean Air Act. (RQ-0460-JC)

S U M M A R Y

Section 382.056(r)(1) of the Health and Safety Code provides an exemption from giving notice of intent to apply for certain permits under the Texas Clean Air Act when a portable source of air contaminants is moved to the location of a facility permitted by the Commission, "if no portable facility has been located at the proposed site at any time during the previous two years." Tex. Health & Safety Code Ann. § 382.056(r)(1) (Vernon Supp. 2002). This provision may not be construed to allow the exemption where a portable facility has been located at the proposed site during the previous two years. Section 382.056(r)(1) applies to pending applications for permits. A "permitted" facility in this provision is a source of air contaminants that is subject to a permit issued under the Texas Clean Air Act.

Section 382.065 of the Health and Safety Act exempts "an existing concrete crushing facility" from a prohibition on locating or operating a concrete crushing facility within 440 yards of a residence, school, or place of worship. Id. §382.065. An "existing" concrete crushing facility is one that was physically present on the site as of the effective date of the provision, but the exemption does not apply to a concrete crushing facility that was located or operating illegally at the site on the effective date.

Opinion No. JC-0494

The Honorable Jim Solis, Chair, Economic Development Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910.

Re: Whether the Gun Barrel City Economic Development Corporation may use Development Corporation Act of 1979, section 4B sales and use taxes to fund a project that does not promote business development. (RQ-0462-JC)

S U M M A R Y

Consistent with the particular 1997 voter-approved election proposition, the sales taxes collected in Gun Barrel City under section 4B of the Development Corporation Act of 1979 may be used only for projects that promote business development. The Board of Directors of the Gun Barrel City Economic Development Corporation may not use the sales tax proceeds to fund a project that does not promote business development.

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

TRD-200202528
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 24, 2002

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Request for Opinions

RQ-0532

The Honorable Frank Madla, Chair, Intergovernmental Relations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068.

Re: Whether nepotism law prohibits a city commissioner from deliberating and voting on a merit increase for a sibling, and related question. (Request No. 0532-JC)

Briefs requested by May 19, 2002

RQ-0533

The Honorable Carole Keeton Rylander, Comptroller of Public Accounts, Lyndon B. Johnson Building, 111 East 17th Street, Austin, Texas 78711-3528.

Re: Whether Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001), affects the authority of the Comptroller of Public Accounts to enforce section 161.122 of the Health and Safety Code, which prohibits placing advertisements for tobacco products within 1,000 feet of a school or church. (Request No. 0533-JC)

Briefs requested by May 22, 2002

RQ-0534

The Honorable Ron Wilson, Chair, Committee on Licensing and Administrative Procedures, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910.

Re: Whether the commissioner of insurance has authority under articles 1.15, 20A.17 or 20A.18C of the Texas Insurance Code to conduct regulatory examinations of physician organizations that, under a contract with a health maintenance organization, provide only medical services that the organization's physicians are professionally licensed to provide in exchange for a predetermined payment on a prospective basis, and related questions. (Request No. 0534-JC)

Briefs requested by May 22, 2002

RQ-0535

The Honorable Jane Nelson, Chair, Nominations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068.

Re: Authority of the Interagency Council on Early Childhood Intervention to contractually demand that third party contractors collect and disclose indentifiable information about their clients to ICECI, and related questions. (Request No. 0535-JC)

Briefs requested by May 23, 2002

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

TRD-200202529
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 24, 2002

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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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.80

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of amended §80.80, for a 60-day period. The text of amended §80.80 was originally published in the January 4, 2002 issue of the *Texas Register* (27 TexReg 13).

Filed with the Office of the Secretary of State, on April 17, 2002.

TRD-200202407
William H. Kuntz, Jr.
Director
Texas Department of Licensing and Regulation
Effective date: April 17, 2002
Expiration date: June 16, 2002
For further information, please call: (512) 463-7348

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.306, concerning cost finding methodology, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to excuse providers from completing a cost report if the report will not be used in the reimbursement determination database. The amendment deletes obsolete language, replaces references to the Texas Department of Human Services (DHS) with references to HHSC, and broadens the definition of time frames from 30 days to either 30 days or one entire calendar month.

Don Green, Chief Financial Officer, has determined that for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Commissioner Don Gilbert has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adoption of the proposed section will be the elimination of needless paperwork for providers, the removal of obsolete language, the updating of agency references, and the broadening of time frame definitions. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the proposal eliminates a requirement for nursing facility (NF) providers, that will reduce paperwork for both large NF chains and independently operated NFs. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Pam McDonald at (512) 438-4086 in HHSC's Rate Analysis section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-146, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Carolyn Pratt at (512) 438-4057 in HHSC's Rate Analysis section.

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt the rules necessary to carry out the commission's duties; and under Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32 of the Human Resources Code.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.306. Cost Finding Methodology.

(a) Providers excused from completing a cost report. Providers are excused from completing a cost report if:

(1) the cost report would represent costs accrued during a time period immediately preceding a period of decertification, if the decertification period was greater than either 30 calendar days or one entire calendar month.

(2) the cost report would be a final cost report (due to a change of ownership or if the facility no longer contracts to serve Medicaid clients) and one of the following applies:

(A) the final cost-reporting period would end after more than 30 calendar days, or more than one entire calendar month before the end of the facility's cost report fiscal year, during the reporting period in question; or

(B) the Texas Health and Human Services Commission (HHSC), or its designee, has excused the provider from submitting a final cost report because:

(i) the report would be due before the appropriate cost report form was finalized, which would result in the final cost report being completed on an inappropriate cost report form; or

(ii) the facility was controlled by at least two different owners during a single calendar year and each owner would otherwise have submitted a cost report with an ending date that fell within that calendar year.

(3) the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(b) [~~(a)~~] Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating unallowable expenses from the cost report. HHSC [~~The Texas Department of Human Services (DHS)~~] reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the reimbursement determination database if there is reason to doubt the accuracy or allowability of a significant part of the information reported.

(1) Cost reports included in the database used for reimbursement determination.

(A) Individual cost reports will not be included in the database used for reimbursement determination if:

~~*(i)* the cost report represents costs accrued during a time period immediately preceding a period of decertification where the decertification was greater than 30 calendar days;~~

~~*(ii)* the cost report is a final cost report (due to a change of ownership or the facility no longer contracting to serve Medicaid clients) and one of the following applies:~~

~~*(I)* the final cost reporting period ended more than 30 days before the end of the facility's cost report fiscal year during the reporting period in question; or~~

~~*(II)* the final cost report was due before DHS finalized the appropriate cost report form and hence the final cost report was completed on an inappropriate year's cost report form; or~~

~~*(iii)* the cost reporting period is less than or equal to 30 calendar days.~~

~~(B) In addition to the reasons for excluding a cost report from the reimbursement determination database specified in subparagraph (A) of this paragraph, individual cost reports may not be included in the database used for reimbursement determination if:~~

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

~~(C) In the event that a facility is controlled by different owners during a single calendar year and each owner submits a cost report with an ending date that falls within that calendar year and neither subparagraph (A) nor (B) of this paragraph preclude the use of either cost report, the cost report representing the most recent time period ending in the calendar year will be used in the reimbursement database.~~

(B) [~~(D)~~] In the event that all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i) and/or (ii) [~~(A) and/or (B)~~] of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to:

~~(A) Revenue offsets.~~

~~*(i)* For the 1995 and 1996 cost reports, expenses incurred from operations not associated with providing contracted services are unallowable for Medicaid cost reporting purposes and must be excluded from the cost report by the provider. These types of expenses include costs related to meals sold to employees or guests, non-medical rentals, barber and beauty shop operations, canteen and gift shops, vending machines, and any other non-contract related activities. Interest income, derived from nursing facility operations, with the exception of interest income from funded depreciation accounts, qualified pension funds, and debt service reserve funds required by non-related party lenders, is to be offset against working capital interest expense, not to exceed total working capital interest costs. Providers' central office operations must also comply with this interest income offset. Costs incurred and revenues accrued for providing ancillary services to Non-Medicaid Only residents are unallowable for Medicaid cost reporting purposes and must be excluded from the cost report by the provider. Ancillary refers to any service for which a separate charge is customarily made in addition to the routine daily service charge. Non-Medicaid Only residents refers to nursing facility residents who are eligible for payments for ancillary services from another source such as private pay, private insurance, Veterans Administration, and Medicare (including Medicaid Qualified Medicare Beneficiary (MQMB) and Dual Eligible (Medicare/Medicaid)) residents.~~

~~*(ii)* Beginning with the 1997 cost report data, providers must complete and submit cost reports in accordance with §355.103(b)(15)(D) and §355.104 of this title (relating to Specifications for Allowable and Unallowable Costs, and Revenues).~~

(A) [~~(B)~~] Fixed capital asset costs.

(i) HHSC [~~DHS~~] staff determine fixed capital asset costs as detailed in this section.

(ii) Fixed capital asset costs are reimbursed in the form of a use fee calculated as described in §355.307 of this title (relating to Reimbursement Setting Methodology). The following fixed capital charges are excluded from the reimbursement base:

(I) building and building equipment depreciation and lease expense;

(II) mortgage interest;

(III) land improvement depreciation; and

(IV) leasehold improvement amortization.

(B) [~~(C)~~] Limits on other facility and administration costs. To ensure that the results of HHSC's [~~DHS's~~] cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC [~~DHS~~] may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. HHSC [~~DHS~~] sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central office overhead expenses or individual central office line items. Individual line item caps are based on an array of all corresponding line items.

(C) [~~(D)~~] Occupancy adjustments. HHSC [~~DHS~~] adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(D) [~~(E)~~] Cost projections. HHSC [~~DHS~~] projects certain expenses in the reimbursement base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective reimbursement applies as specified in §355.108 of this title (relating to Determination of Inflation Indices).

(3) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (1)(A)(i)[~~(1)(B)(i)~~] of this subsection.

(c) [~~(b)~~] Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC [~~DHS~~] excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(d) [~~(c)~~] General information. In addition to the requirements of this section, cost reports [~~pertaining to provider's fiscal years ending in calendar year 1995 and subsequent years~~] will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), and §355.110 of this title (relating to Informal Reviews and Formal Appeals). [~~Cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years will be governed by the information in §355.104 of this title (relating to Revenues).~~]

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

Filed with the Office of the Secretary of State on April 19, 2002.

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 438-3734

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CHAPTER 381. GUARDIANSHIP SERVICES SUBCHAPTER D. STANDARDS FOR GUARDIANSHIP PROGRAMS

The Health and Human Services Commission (HHSC) proposes new subchapter D, Standards for Guardianship Services, Divisions 1 through 4, §§381.301, 381.303, 381. 305; §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325; 381.331, 381.333, 381.335, 381.337, 381.339; and §§381.345, 381.347, 381.349, 381.351, 381.353, 381.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367. Proposed new Subchapter D sets forth the minimum standards for local guardianship programs. The proposed standards were developed with the advice of the Guardianship Advisory Board, under Chapter 531, Government Code, and with input from providers of guardianship services, both public and private.

Division 1, General, of the proposed new subchapter contains §§381.301, 381.303 and 381. 305. Section 381.301 sets forth the purposes of the proposed standards. Section 381.303 addresses the applicability of and compliance with the proposed new standards. Section 381.305 explains that programs that do not certify compliance with Chapter 381 will not be eligible for grant funding under Chapter C of Chapter 381 or for technical assistance from HHSC's Guardianship Alliance of Texas. Division 2 concerns the administration and fiscal management of guardianship programs and addresses their organizational structure in §381.315, fiscal responsibilities in §381.317, budgets in §381.319, insurance requirements in §381.321, guardianship fees in §381.323, and guardianship bonds in §381.325. Division 3 concerns management of guardianship program personnel. Section 381.331 explains

that a guardianship program may not shift its legal liability to an individual employee or volunteer, except as allowed by law. Section 381.333 provides for criminal background checks for all employees and volunteers. Under §§381.335 and 381.337, guardianship programs must develop and maintain policies and procedures that insure the confidentiality of client information and that require ongoing supervision of all employees and volunteers who provide services to clients. Section 381.339 states the goal of obtaining community involvement in guardianship programs

Division 4 concerns client services. Section 381.345 requires guardianship programs to consider less restrictive alternatives to guardianship when it is in the best interests of the client. Under §381.347, guardianship programs must provide adequate levels of services to all clients. Section 381.349 addresses the role of volunteers. Staffing and training requirements are set forth in §§381.351 and 381.353. Section 381.355 addresses conflicts of interest. Section 381.357 requires guardianship programs to develop procedures or guidelines for referrals and eligibility for services. Section 381.357 also requires guardianship programs to assess a client as soon as possible after a referral into the program. Section 381.359 requires that services for clients be provided as soon as possible and that clients be prioritized based, in part, on the risk to the client of delaying services. Section 381.359 also requires a policy that individuals on waiting lists be reassessed at frequent intervals. Section 381.361 discusses a guardianship program's responsibility for burial or cremation. Sections 381.363, 381.365, and 381.367 address caseload evaluation and monitoring and the development for clients of personal and financial care plans.

Don Green, Chief Financial Officer, has determined that for the first five years the rules are in effect, there will be no additional cost to state or local governments as a result of administering and enforcing the proposed new rules. There will be no adverse affect on small or large businesses. The proposed section will not result in additional costs to persons required to comply with the proposed rules other than the costs associated with criminal background checks on the staff and volunteers of local guardianship programs. The rules do not have any anticipated adverse affect on small or micro-businesses. The new subchapter will not affect local employment.

Kathleen Anderson, Director, Guardianship Alliance of Texas, HHSC, has determined that for each of the first five years the rules are in effect, the public benefits from the adoption of the proposed rules are enhanced protections for incapacitated persons in local guardianship programs and increased accountability of local guardianship programs.

HHSC has determined that the section is not a "major environmental rule," as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may materially, adversely affect 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 new subchapter is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed subchapter does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and, therefore, does not constitute a taking under §2007.043, Government Code.

Comments on the proposed rules may be submitted to Kathleen W. Anderson, Director, Guardianship Alliance of Texas, Health and Human Services Commission, by mail to 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751, or by facsimile to (512) 424-6586, within 30 days of publication of this proposal in the *Texas Register*. Additional information may be obtained by calling Ms. Anderson at (512) 424-6599.

DIVISION 1. GENERAL

1 TAC §§381.301, 381.303, 381.305

The new rules are proposed under §531.033, Government Code, which provides the commissioner of HHSC with broad rulemaking authority, and §531.124, Government Code, which authorizes HHSC, with the advice of the Guardianship Advisory Board, to adopt minimum standards for guardianship and related services. The proposed rules affect Chapter 531, Government Code. No other statues, articles, or rules are affected by the proposed new rules.

The new rules affect Chapter 531 of the Texas Government Code.

§381.301. Purpose.

The standards in this chapter are intended to serve as minimum standards for guardianship programs in Texas. A guardianship program is encouraged to apply stricter or higher standards in its operation of its program.

§381.303. Applicability of Standards to Guardianship Programs.

(a) Applicability. The minimum standards established under this subchapter are applicable to all guardianship programs, regardless of size, location, or model of service delivery.

(b) Compliance. A guardianship program must comply with these standards no later the one year following the effective date of these standards.

§381.305. Ineligibility of Non-compliant Programs.

A guardianship program that does not certify in writing to the Health and Human Services Commission (HHSC) that it is in compliance with the minimum standards established under this subchapter is not eligible for grant funding under subchapter C of this chapter or technical assistance from HHSC's Guardianship Alliance of Texas.

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

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Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 2. ADMINISTRATION AND FISCAL MANAGEMENT

1 TAC §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325

The new rules are proposed under §531.033, Government Code, which provides the commissioner of HHSC with broad rulemaking authority, and §531.124, Government Code, which authorizes HHSC, with the advice of the Guardianship Advisory Board, to adopt minimum standards for guardianship and related services. The proposed rules affect Chapter 531, Government Code. No other statues, articles, or rules are affected by the proposed new rules.

The new rules affect Chapter 531 of the Texas Government Code.

§381.315. Form Of Entity.

Each guardianship program must prepare and maintain an organization chart that clearly discloses who is responsible for decision making within the program. A guardianship program that exists within the framework of a larger organization (a program that is not a stand-alone program) must prepare and maintain an organization chart that clearly reveals the guardianship program's degree of decision-making autonomy within the larger organization.

§381.317. Fiscal Responsibility.

A guardianship program has the following two distinct types of fiscal responsibility:

(1) Budget and Financial Functions. A guardianship program must maintain the fiscal standards required by its form of entity. All freestanding guardianship programs must follow generally accepted accounting principles and be able to produce proof that generally accepted accounting principles are followed. Guardianship programs that exist within the framework of a larger organization shall maintain the budget and financial functions required by funding sources and/or the larger organization's management.

(2) Clients. The fiscal responsibility of a guardianship program to its clients is governed by Chapter 13 of the Texas Probate Code and enforced by the court that appoints the guardianship program or its members to serve as guardian.

§381.319. Budget.

A guardianship program will maintain procedures to develop, fund, and oversee a budget that is adequate to meet the guardianship and/or less restrictive alternative to guardianship needs of its clients.

§381.321. Insurance.

A guardianship program will protect the entity itself, its board members, employees, volunteers, and clients by annually conducting a risk management analysis and either obtaining appropriate insurance or providing other protections as determined by the guardianship program.

§381.323. Fees For Services.

A guardianship program will develop and maintain written policies and procedures for exploring third-party payment options before charging fees for services to clients. Any fees charged to an incapacitated person's funds must receive prior approval from the judge having jurisdiction over the guardianship. No person needing a guardianship or a less restrictive alternative to guardianship services should be denied these services because of the person's inability to pay for the services.

§381.325. Guardianship Bonds.

A guardianship program must develop and adopt a policy for bonds that describes the means to supply and maintain guardianship bonds as required by a court. The policy should ensure that the qualification of a guardian by a court is not delayed because of the lack of a bond or an insufficient bond. A guardianship program should determine, when selecting and recruiting its employees and volunteers, whether and to what extent the person to be appointed guardian is eligible to be bonded.

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

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DIVISION 3. PERSONNEL MANAGEMENT

1 TAC §§381.331, 381.333, 381.335, 381.337, 381.339

The new rules are proposed under §531.033, Government Code, which provides the commissioner of HHSC with broad rulemaking authority, and §531.124, Government Code, which authorizes HHSC, with the advice of the Guardianship Advisory Board, to adopt minimum standards for guardianship and related services. The proposed rules affect Chapter 531, Government Code. No other statues, articles, or rules are affected by the proposed new rules.

The new rules affect Chapter 531 of the Texas Government Code.

§381.331. Guardianship Accountability.

A guardianship program will not adopt any policy or procedure that has the purpose of shifting liability imposed by law on the guardianship program, except as allowed by law, to an individual employee or volunteer.

§381.333. Service Provider Employee Screening.

(a) A guardianship program will perform a criminal background check and a reference check on each employee or volunteer who:

(1) works or will work directly with a client;

(2) currently has or will have access to a client's assets or a client's confidential information.

(b) An employee or volunteer may not provide any services to a client before the guardianship program has completed these checks.

(c) A person may not be employed by or serve as a volunteer in a guardianship program in a position that allows access to a client, a client's assets, or a client's confidential information if:

(1) the person was finally convicted of an offense described in section 678, Probate Code (Presumption Concerning Best Interest); or

(2) the person is ineligible to be appointed guardian due to the provisions of section 681, Probate Code (Persons Disqualified to Serve as Guardians); or

(3) the person was found unsuitable to be appointed guardian by the Probate Court.

§381.335. Confidentiality.

(a) A guardianship program will develop and maintain policies and procedures to insure the confidentiality of client information.

(b) These procedures should, at a minimum, include requiring employees and volunteers to sign confidentiality agreements that conform to all applicable laws and regulations, maintaining client records

in a secure location, and training employees and volunteers on confidentiality requirements as they relate to guardianship client records and information.

§381.337. Supervision of Employees and Volunteers.

(a) A guardianship program will develop and maintain policies and procedures that require ongoing supervision of all employees and volunteers who provide services to clients, regardless of whether an individual or the guardianship program is appointed guardian.

(b) Supervisory procedures will provide for training, monitoring, and evaluation of employees and volunteers that is consistent with these standards.

§381.339. Community Involvement.

(a) A guardianship program will strive to attain community involvement in the guardianship program by identifying and involving persons or agencies that provide services of any nature to those populations served by the guardianship program.

(b) A guardianship program will consider the creation of a local advisory committee that consists of persons or representatives from agencies identified under subsection (a) to provide advice and guidance to the guardianship 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.

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DIVISION 4. GUARDIANSHIP PROGRAMS AND CLIENT SERVICES

1 TAC §§381.345, 381.347, 381.349, 381.351, 381.353, 383.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367

The new rules are proposed under §531.033, Government Code, which provides the commissioner of HHSC with broad rulemaking authority, and §531.124, Government Code, which authorizes HHSC, with the advice of the Guardianship Advisory Board, to adopt minimum standards for guardianship and related services. The proposed rules affect Chapter 531, Government Code. No other statues, articles, or rules are affected by the proposed new rules.

The new rules affect Chapter 531 of the Texas Government Code.

§381.345. Less Restrictive Alternatives To Guardianship.

(a) A guardianship program will protect the rights and autonomy of clients and potential clients by promoting the use of less restrictive alternatives to guardianship whenever such alternatives are in the best interests of the client or potential client.

(b) When a guardianship program believes that a less restrictive alternative to guardianship is in the best interests of the client, the guardianship program will either offer these alternatives or refer potential clients to other programs that offer these alternatives.

(c) A guardianship program will advocate for the best interests of a potential client to insure that a court:

(1) grants the guardian only those powers necessary to protect the health, safety, and resources of a potential client; and

(2) limits a potential client's rights only to the extent necessary to protect the health, safety, and resources of a potential client.

§381.347. Guardianship Program Service Levels.

A guardianship program will develop and maintain procedures to provide an adequate level of services to all clients, regardless of whether the program uses paid employees, volunteers, or both employees and volunteers. A guardianship program will maintain an adequate number of employees and/or volunteers to appropriately manage the care of its clients.

§381.349. Role of Volunteers.

A guardianship program may use volunteers in a variety of roles, which include, but are not limited to, the following:

(1) guardians of the person and/or estate of clients;

(2) representative payees or bill payers;

(3) agents of the guardianship program that are appointed as guardian;

(4) to visit, transport, or provide other services to the client on behalf of the appointed guardian; or

(5) staff positions.

§381.351. Staffing Requirements.

A guardianship program will have a program director that is responsible for the development and management of the guardianship program on a daily basis. Program directors are encouraged to become certified by the National Guardianship Association as a Registered Guardian and Master Guardian. Guardianship program staff may be either employees or volunteers, and staff qualifications may vary among the guardianship programs. A guardianship program will develop job descriptions for all staff outlining the duties and responsibilities of all staff members. Job requirements for education and experience must be commensurate with duties and responsibilities and must be comparable to requirements for other positions in the community with similar duties and responsibilities.

§381.353. Training Requirements.

A guardianship program will provide initial and ongoing training on guardianship and less restrictive alternatives for employees and volunteers. Training topics will include, but not be limited to, guardianship laws, disability and aging issues, medical treatment, medication issues, end of life decisions, housing alternatives, money management alternatives, and case management techniques.

§381.355. Conflicts of Interest.

A guardianship program will develop procedures and policies to avoid potential conflicts of interest, which should promote the best interests of the clients of the guardianship program as the guardianship program's first priority.

§381.357. Referral, Intake, and Assessments.

(a) Referral. A guardianship program will develop a procedure for accepting referrals and disseminating the referral information to local courts, hospitals, adult protective services, nursing facilities, and other potential referral sources. Referral procedures must be designed to avoid situations in which the guardianship program will be referring clients to itself.

(b) Intake. A guardianship program will develop eligibility guidelines for the clients to whom services may be provided by the guardianship program. A guardianship program will not accept any guardianship appointment or make any agreement to provide less restrictive alternative services that the guardianship program cannot handle or provide in a competent manner. Intake procedures will be designed to collect sufficient information to determine the least restrictive alternative available to the client and to proceed with the appropriate services as soon as possible.

(c) Assessment. As soon as possible after receiving a referral, a guardianship program will assess a client to determine the following:

(1) whether there is any immediate risk of abuse, neglect, or exploitation to the client;

(2) how the client's incapacity, if any, affects the client's ability to make reasonably prudent decisions;

(3) what limitation of the client's rights, if any, would be in the client's best interests;

(4) what powers a guardian would need to protect the best interests of the client; and

(5) what tasks need to be included in the care plan for the client.

§381.359. Prioritization of Potential Clients on Waiting Lists.

A guardianship program should make every effort to provide a guardian or to provide less restrictive alternative services for a potential client as soon as possible. If a potential client cannot be served at the time the services are needed, a guardianship program must consider the degree of risk to a potential client's health, safety, and resources in determining his or her priority on a waiting list. Any assessment of the potential client will include an assessment of the risk to the client of delaying services. A guardianship program will also maintain a policy that will insure that persons on waiting lists are reassessed at frequent intervals in order to reprioritize cases with changed circumstances as needed.

§381.361. Responsibility for Burial or Cremation.

A guardianship program should consider plans for burial or cremation for its guardianship clients, and, whenever possible, should consult such clients concerning the client's wishes with regard to this matter. Whenever possible, a guardianship program should make burial or cremation arrangements in advance of need. A guardianship program should develop a procedure for contacting local charitable or public burial or cremation resources for those guardianship clients without assets to make these arrangements.

§381.3663. Evaluation and Monitoring of Caseloads.

A guardianship program will maintain procedures to monitor and evaluate its guardianship and less restrictive alternative services caseloads to insure that all its clients are receiving quality services. These procedures must include provisions for periodic interaction between supervisory staff and guardians, record keeping requirements, random audits of individual case records, interviews with clients and service providers, and other appropriate measures.

§381.365. Personal Care Plans for Guardianship Clients.

After a guardianship program or one of its members is appointed as a guardian of the person, the guardianship program will develop a care plan to address the client's personal needs.

(1) Guardian of the Person Care Plans. The care plan should address the powers, duties, and responsibilities given to the guardian of the person by the court's order appointing the guardian. If the court's order states that the guardian of the person has full authority, the care plan should address the powers, duties, and responsibilities given to the guardian of the person by section 767, Probate Code, Powers and Duties of Guardians of the Person, and other applicable sections of Chapter 13, Probate Code, concerning guardianships. The care plan may also include the following:

(A) monitoring services being provided to the client;

(B) providing appropriate clothing for the client;

(C) arranging for medical care, dental care, psychiatric care, and rehabilitation services as necessary;

(D) arranging for education and/or employment opportunities when appropriate;

(E) monitoring the nutrition of the client;

(F) obtaining safe and secure housing; and

(G) obtaining needed public benefits, if there is no guardian of the estate or other person charged with securing those benefits.

(2) Health Care Decisions. A guardianship program will develop a policy that generally describes the types of decisions that can be made by the guardian independently, the types of decisions that should be made only on the advice of two physicians or a psychologist licensed in this state or certified by the Texas Department of Mental Health and Mental Retardation, the types of decisions that should be made only with peer review, and the types of decisions that should be made only after obtaining an order from the court.

(3) Personal Visits. A guardianship program will establish a policy concerning the frequency of personal visits to be made by the guardian or the guardian's representative to the guardianship client. These periodic visits should include personal interaction with the client, if possible, monitoring for signs of abuse or neglect and, if applicable, checking facility charts and consulting with facility staff or other caregivers.

(4) Client Files. A guardianship program will maintain a file on each client that includes intake information, a current copy of the personal and/or financial care plan, a copy of any court orders or Letters of Guardianship, and a case note concerning client activities and concerns.

(5) End of Life Decisions. A guardianship program will include in its care plan whether the client has a Do Not Resuscitate document or Directive to Physicians as to whether the client has ever expressed a preference regarding the use of extraordinary life sustaining measures. A guardianship program shall consult with legal counsel and the judges of courts with guardianship jurisdiction in its service area to develop a policy regarding end of life decisions. This policy should be communicated to all employees and volunteers of the guardianship program.

§381.367. Financial Care Plans for Guardianship Clients.

After a guardianship program or one of its members is appointed as a guardian of the estate, the guardianship program will develop a care plan to address the client's financial needs.

(1) Guardian of the Estate Care Plans. The care plan should address the powers, duties, and responsibilities given to the guardian of the estate by the court's order appointing the guardian. If the court's order states that the guardian of the person has full authority, the care plan should address the powers, duties, and responsibilities given to the guardian of the estate by section 768, Probate Code, General Powers and Duties of Guardian of the Estate, and other applicable sections in Chapter 13, Probate Code, concerning guardianships. The care plan may also include the following:

(A) applying for a monthly allowance for the client's ongoing financial needs;

(B) filing an inventory, appraisal, and list of claims, as required by section 729, Probate Code, Inventory and Appraisement;

(C) changing existing bank accounts to reflect the guardianship or creating new bank accounts in the name of the guardian on behalf of the client; and

(D) developing a long-term financial plan to manage the client's assets to provide for the best care for the client during the client's projected lifetime.

(2) Testamentary Documents. The care plan should state whether the client has a will or other testamentary document, and the guardianship program should attempt to locate any such instruments and deposit them with the court for safekeeping, if possible.

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

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Marina S. Henderson
Executive Deputy Commissioner
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For further information, please call: (512) 424-6576

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.13

The Texas Department of Housing and Community Affairs proposes new §1.13 concerning the certification with certain laws prohibiting discrimination required of housing applicants and the proposed sanctions for noncompliance. The new section is necessary to comply with §2306.257 of the Texas Government Code, as added by SB 322, 77th Session of the Texas Legislature.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Carrington also has determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of enforcing this section will be the increased likelihood of affordable housing available to all free of discrimination. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with this section as proposed. The proposed section will not have an impact on any local economy.

Comments may be submitted to Anne O. Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: apaddock@tdhca.state.tx.us.

The new section is proposed pursuant to authority of the Texas Government Code, Chapter 2306.

No other codes, articles or statute are affected by the proposed new section.

§1.13. Applicant Compliance with State and Federal Laws Prohibiting Discrimination.

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

(1) Applicant--A person who submits, or is preparing to submit, to the Department an application for housing funds or other housing assistance from the Department.

(2) Application--The written request for Department housing program funds or other assistance in the format required by the Department including any exhibits or other supporting material.

(3) Board--The board of directors of the Texas Department of Housing and Community Affairs.

(4) Department--The Texas Department of Housing and Community Affairs.

(5) Executive Director--The executive director of the Department.

(6) Housing development--means property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department and that is financed under the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas.

(7) Recipient--The individual or entity that has received funds or other assistance from the Department pursuant to its application.

(b) Applicable Laws. An applicant may not receive funds or other assistance from the Department until the Department receives a properly completed certification from the applicant that it is in compliance with the following housing laws:

(1) state and federal fair housing laws, [including Chapter 301, the Property Code, the Texas Fair Housing Act, Title IV of the Civil Rights Act of 1968 (42 U.S.C. Section 3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. Section 3601, et seq.)];

(2) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a, et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.); and

(4) the Rehabilitation Act of 1973 (29 U.S.C. Section 701, et seq.).

(c) Monitoring. The Department periodically monitors for compliance with the requirements specified in subsection (b) of this section during the construction phase of a housing development that has received funds or other assistance from the Department. The monitoring level for each housing development is based on the amount of risk of noncompliance with the requirements specified in subsection (b) of this section associated with the housing development. The Department shall notify the recipient in writing of an apparent violation and shall afford the recipient a reasonable amount of time, as determined by the Department, to correct the identified violation, if possible, prior to the imposition of a sanction. The Department shall notify the Texas Commission on Human Rights at the same time notification is sent to the recipient.

(d) Sanctions. The Department may impose one or more of the following sanctions depending on the severity of the violation of a law specified in subsection (b) of this section by a recipient of housing funds or other assistance from the Department:

(1) a reprimand posted on the Department's website,

(2) termination of assistance, or

(3) a bar on future eligibility for assistance through a housing program administered by the Department. A bar shall be in place for at least one calendar year from the date of imposition by the Department and may not last for more than ten calendar years from the date of imposition.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202488
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-3726

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PART 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

CHAPTER 176. ENTERPRISE ZONE PROGRAM

10 TAC §§176.1 -176.12

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

The Texas Department of Economic Development (agency) proposes the repeal of Chapter 176. Enterprise Zone Program Rules, §§176.1-176.12, relating to identifying severely distressed areas of the state and providing incentives by state and local government to induce investment in those areas, as authorized by Government Code, Chapter 2303, as amended, Enterprise Zones.

The repeal is necessary to adopt new rules that accurately reflect current law, as amended by House Bill 820 and House Bill 2686, and to reflect current program practices of the agency.

Dan Martin, Director of Finance, has determined for each year of the first five years that the repeal will be in effect there will be no fiscal implications to the state or to local governments as a result of the repeal other than the increase in fees to government entities who choose to participate in the program. No cost to either government, except for the increase in fees as noted above, or to the public will result from the repeal. There will be no impact on small businesses or micro-businesses.

Mr. Martin has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is a clearer understanding of the rules and processes for participation in the program. There will be economic costs in the form of increased fees to persons who choose to participate in the program and thus are required to comply with the repeal.

Written comments on the proposed repeal may be hand delivered to Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415 and should be addressed to the attention of Mary Herrick, Legal Assistant. Comments must received within 30 days of publication of the proposed repeal.

The repeal is proposed pursuant to Government Code 481.0044(a), which directs the Governing Board of the agency to adopt rules for administration of agency programs, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 2303, as amended, is affected by this proposal.

§176.1. General Provisions.

§176.2. Filing Requirements for Applications and Claims.

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

§176.4. Application Contents for Designation of Enterprise Zones.

§176.5. Requirements for Designation as a Recycling Market Development Zone and Respective Loans or Grants.

§176.6. Application Contents for Designation as a Recycling Market Development Zone.

§176.7. Requirements for Designation of Enterprise Projects.

§176.8. Application Contents for Designation of an Enterprise Project.

§176.9. Certification of Neighborhood Enterprise Associations.

§176.10. Approval Standards.

§176.11. Reporting Requirements.

§176.12. Boundary Amendments.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202464
Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 936-0177

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10 TAC §§176.1 - 176.10

The Texas Department of Economic Development (agency) proposes new Chapter 176. Enterprise Zone Program Rules, §§176.1-176.10, relating to identifying severely distressed areas of the state and providing incentives by state and local government to induce investment in those areas, as authorized by Government Code, Chapter 2303, as amended, Enterprise Zones.

The proposed new rules are necessary to accurately reflect current law, as amended by House Bill 820 and House Bill 2686, and to reflect current program practices of the agency. In addition:

Proposed new §176.1 updates the rules to eliminate references to recycling market development zones, and to clarify the definition of qualified business.

Proposed new §176.2 updates the rules to eliminate references to recycling market development zones and to accurately reflect current program practices regarding filing of applications and to accurately reflect current law regarding job certification, and allow for an increase in the application fees.

Proposed new §176.3 updates the rules to eliminate references to recycling market development zones and clarify the statute regarding automatic designation as a state enterprise zone for areas designated under federal empowerment zone initiatives.

Proposed new §176.4 updates the rules by eliminating references to recycling market development zones.

Proposed new §176.5 replaces repealed rule §176.7 due to the renumbering of the chapter and clarifies that retained jobs that are vacated and refilled must meet the original hiring requirement standard.

Proposed new §176.6 replaces repealed rule §176.8 due to the renumbering of the chapter and clarifies when a purchaser or lessee of a qualified business must apply to assume the enterprise project designation and when a designated project may apply for an adjustment of its job allocation.

Proposed new §176.7 replaces repealed rule §176.9 due to the renumbering of the chapter.

Proposed new §176.8 replaces repealed rule §176.10 due to the renumbering of the chapter and updates the rules to eliminate references to recycling market development zones and accurately reflect the current law regarding conditions under which the agency will designate a qualified business as an enterprise zone, and clarify the length of time of enterprise zone designations and to accurately reflect present program procedures regarding assumption of a project designation or name change by a qualified business.

Proposed new §176.9 replaces repealed rule §176.11 due to the renumbering of the chapter.

Proposed new §176.10 replaces repealed rule §176.12 due to the renumbering of the chapter.

Dan Martin, Director of Finance, has determined for each year of the first five years that the new rules are in effect there will be no fiscal implications to the state or to local governments as a result of the new rules other than the increase in fees to government entities who choose to participate in the program. No cost to either government, except for the increase in fees as noted above, or to the public will result from the new rules. There will be no impact on small businesses or micro-businesses.

Mr. Martin has also determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of the new rules is a clearer understanding of the rules and processes for participation in the program. There will be economic costs in the form of increased fees to persons who choose to participate in the program and thus are required to comply with the new rules.

Written comments on the proposed new sections may be hand delivered to Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512)936-0415 and should be addressed to the attention of Mary Herrick, Legal Assistant. Comments must received within 30 days of publication of the proposed new rules.

The new rules are proposed pursuant to Government Code 481.0044(a), which directs the Governing Board of the agency to adopt rules for administration of agency programs, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 2303, as amended, is affected by this proposal. Texas Administrative Code.

§176.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303, as amended, and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking, Texas Government Code, as amended, the Texas Department of Economic Development prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Enterprise Zone Program.

(b) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies those distressed areas and provides incentives by both state and local government to induce private investment in those areas by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives and economic development program benefits. The purpose of these sections is to provide standards of eligibility and procedures for applications for designation of qualified areas as enterprise zones and for designation of qualified businesses as enterprise projects.

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

(1) Act--The Texas Enterprise Zone Act, Texas Government Code, Chapter 2303, as amended.

(2) Administrative authority--A board, commission, or committee appointed by the governing body to administer the Act within an enterprise zone.

(3) Affected entity--The applicant, qualified business, qualified employee, or any other person that is a party to a transaction involving the designation of an enterprise zone or project.

(4) Applicant--The municipality, county, or combination of municipalities or counties filing an application with the department for designation of an enterprise zone or enterprise project or affected entity filing with the department for certification under the Act, §2303.105 or §2303.405, and this chapter.

(5) Application--An application, including supporting and supplemental instruments and documentation, for designation of an enterprise zone or for designation of an enterprise project or for certification by the department or local governing body as a qualified business or neighborhood enterprise association under the Act and this chapter.

(6) Board--The Governing Board of the Texas Department of Economic Development.

(7) Day--The period of time between 8:00 a.m. and 5:00 p.m. on any day other than a Saturday, Sunday, or state or federal holiday.

(8) Department--The Texas Department of Economic Development.

(9) Depressed area--An area within the jurisdiction of a county or municipality designated by ordinance or order that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the state average for that period or if the area has had at least a 12% population loss during the most recent six-year period or a population loss of at least 4.0% for the most recent three-year period; and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area;

(ii) at least 70% of the residents or households of the area have an income below 80% of the median income of the residents or households of the locality or state, whichever is lower;

(iii) chronic abandonment or demolition of commercial or residential structures exists in the area;

(iv) substantial tax arrearages for commercial or residential structures exist in the area;

(v) substantial losses of businesses or jobs have occurred in the area;

(vi) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period; or

(vii) the area has had a substantial increase in the number of individuals younger than 18 years of age arrested due to criminal activity.

(10) Economically disadvantaged individual--An individual who:

(A) for at least three months before obtaining employment with a qualified business was unemployed;

(B) receives public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty;

(C) is economically disadvantaged as defined by the Job Training Partnership Act, §4 (8) (29 United States Code, §1503 (8));

(D) is an individual with a disability, as defined by 29 United States Code §706 (8);

(E) is an inmate as defined by the Government Code, §498.001; or

(F) is entering the workplace after being confined in a facility operated by the institutional division of the Texas Department of Criminal Justice or under contract with the Texas Department of Criminal Justice; or

(G) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or

(H) meets the current low income or moderate income limits developed under the United States Housing Act of 1937, §8 (42 United States Code §1437f et seq.).

(11) Eligible taxable proceeds--Taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(12) Enterprise project--A qualified business designated by the department as an enterprise project under the Act, §303.405 and §176.8 of this title (relating to Requirements for Designation of Enterprise Projects) that is eligible for the state tax incentives provided by law for an enterprise project.

(13) Enterprise zone--An area of the state designated by the department as an enterprise zone under the Act, Subchapter C and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

(14) Enterprise project eligible enterprise zone--A state-designated enterprise zone that meets economic distress levels set forth in the Act, §2303.102.

(15) Executive director--The executive director of the department or his or her authorized designee.

(16) Extraterritorial jurisdiction--Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality, as defined by Chapter 42, Local Government Code.

(17) Governing body--The governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(18) Local Government--A municipality or county.

(19) Neighborhood enterprise association--A private sector neighborhood organization within an enterprise zone that meets the criteria set forth in the Act, §2303.301 and §176.7 of this title (relating to Certification of Neighborhood Enterprise Associations).

(20) New permanent job--A new employment position created by a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually and intended to be an employment position that exists during the period the business is designated as an enterprise project.

(21) Qualified business--A person, including a corporation or other entity that the department, for purposes of state benefits under the Act, and a governing body, for purposes of local benefits, certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone; and

(B) at least 25% of the qualified business's new permanent jobs in the zone are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals; and

(C) a franchise or subsidiary of a new or existing business may be certified by the governing body of an enterprise zone as a qualified business if the franchise or subsidiary is located entirely in the zone and maintains separate books and records of the business activity conducted in the zone; or

(D) as a builder that has demonstrated proficiency in residential construction, financial stability, and participation in a 10-year insured warranty program in accordance with the Act and §176.8 (f) of this title (relating to Approval Standards for Certification of a Builder as a Qualified Business); or

(E) is a qualified hotel project that is owned by a municipality with a population of 1.5 million or more or a nonprofit municipality sponsored local government corporation created pursuant to the Texas Transportation Corporation Act, Chapter 431, Transportation Code proposed to be constructed within 1,000 feet of a convention center owned by a municipality having a population of 1.5 million or more, including all facilities ancillary thereto such as shops and parking facilities.

(22) Qualified employee--An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.

(23) Qualified property--Any one or more of the following:

(A) tangible personal property located in the zone that was acquired by a taxpayer not earlier than the 90th day before the date of designation of the area as an enterprise zone or enterprise project, as applicable, and was or will be used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of designation of the zone or enterprise project, as applicable, and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

(24) Retained job--A job that existed with a business prior to designation as an enterprise project or certification as a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually and that is intended to be an employment position retained during the period the business is designated as an enterprise project or certified as a qualified business in accordance with Texas Tax Code, Chapter 151.

(25) Staff--The staff of the department.

(d) Amendment and suspension of rules. These sections may be amended by the executive director at any time in accordance with the Administrative Procedure Act, Texas Government Code, Subchapter B, as amended. The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the executive director, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(e) Application of sections. All sections shall be applied collectively, to the extent relevant, in connection with specific determinations made by the department in the course of its administrative functions. The department will make its determination on the basis of specific characteristics and circumstances of the individual application, and in light of the basic statutory purposes in the particular area.

(f) Examination of records. Any party requesting the examination of records pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552, shall indicate in writing the specific nature of the documents to be viewed, and if photocopying is desired, the prevailing standard fee of the department will be charged to cover the cost of the request.

(g) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Texas Enterprise Zone Program, Business Development Division, Texas Department of Economic Development, P. O. Box 12728, Austin, Texas 78711-2728.

§176.2. Filing Requirements for Applications and Claims.

(a) Form.

(1) Enterprise zones and enterprise projects. An application must be filed on letter-sized paper and must contain all information and documentation required under the Act and this chapter, as applicable. The application must be submitted in a three-ring loose-leaf binder. Each application for designation as an enterprise zone, for enterprise zone boundary amendments, and for enterprise project designation must be typed directly on the form provided by the department and must include all applicable attachments as specified in the application.

(2) Certifications or refunds. An application to request refunds, tax reductions, or certification of new permanent jobs created or jobs that have been retained, or certification as a qualified business to qualify for refunds or deductions of state sales, use, franchise taxes, or other state benefits encouraged under the Act, as appropriate, or an application to request certification by the department of a neighborhood enterprise association, must be made to the department in writing on the appropriate forms and include applicable attachments as specified in the application as provided by the department or the Comptroller of Public Accounts.

(b) Filing.

(1) Enterprise zones. Applications for enterprise zone designation, or enterprise zone boundary amendments, may be filed with the department on any day. The applicant shall file with the department an original of an application for designation of an enterprise zone, or enterprise zone boundary amendment, if by separate application from an enterprise zone or zone boundary amendment application. A separate application must be submitted to the department for each area nominated for designation as an enterprise zone or to amend the boundaries of a designated enterprise zone.

(2) Enterprise projects. Applications for enterprise project designation may be filed on or before, but no later than, quarterly deadlines published by the department in §176.8 (b)(1) of this title (relating to Approval Standards) for consideration. Applications received after a published deadline will not be reviewed and considered for designation until after the next published deadline. The applicant shall file with the department an original of an application for designation as an enterprise project.

(3) Qualified hotel project. Applications for a qualified hotel project designation may be filed on any day. The applicant must file with the department a certified copy of a resolution nominating the hotel project and a description or summary of the project detailing the nature of the business, estimated number of new jobs to be created, and the projected capital investment. To permit the department to designate the applicant as a qualified hotel project, the project shall be deemed to have met all qualifications under the Act, §2303.003 and §2303.5055. Furthermore, the qualified hotel project designation shall not be considered in determining the number of enterprise projects that the department may approve pursuant to the other provisions of this Act.

(4) Certifications.

(A) Enterprise projects.

(i) Requests for job certifications may be filed with the department on any day. A job certification request may be made annually or semiannually. No job certification application will be accepted if it is submitted outside the job certification window following the 5-year designation. An applicant must correct all certification deficiencies within 60 days following notification from the department. All job certifications will be subject to Subchapter G, Chapter 2303, Section 2303.516 of the Act as detailed at §176.8 (d) of this title.

(I) The job certification application must reflect the minimum hiring commitment of 25% economically disadvantaged or enterprise zone residency (ED/EZR) or the commitment as outlined and scored in the original project application, whichever is higher; and

(II) claim for ED status must be accompanied by post employment form for each of the positions claiming ED status whereas EZR status must be documented with written confirmation on governing body letterhead confirming eligible zone residency; and

(III) applicant must provide documentation of commitment to community as outlined and scored in the original application.

(ii) An enterprise project must be annually certified by the department as a qualified business to receive its state sales and use tax refunds and franchise tax reductions.

(iii) Requests for refunds for designated enterprise projects should be filed directly with the Comptroller in accordance with the applicable Comptroller rules.

(B) Qualified business.

(i) Requests for job certifications for qualified businesses, other than designated enterprise projects, may be filed with the department on any day within 12 months after the last day of the nomination period as a qualified business in the applicable governing body or bodies nominating resolution.

(ii) Requests for refunds of state sales and use taxes and franchise taxes available to businesses nominated for one-time incentives for designated qualified businesses should be filed directly with the Comptroller in accordance with the applicable Comptroller rules.

(iii) Through the applicable governing body or bodies to the department, a residential builder may request certification as a qualified business to construct single or multifamily housing in the governing body's or bodies' enterprise zone even though the builder's principle office or headquarters is located in the state of Texas outside the zone. The governing body or bodies shall adopt criteria and guidelines to advance the Act and zone objectives including establishing a minimum commitment of the number of housing units that are to be constructed in an enterprise zone within its jurisdiction(s) within a specific period of time by a builder or group of builders before requesting state qualified business status. A builder or group of builders that form a consortium for the purpose of constructing housing in an enterprise zone that has met requirements established by the local governing body or bodies may be nominated for enterprise project designation by the local governing body or bodies. In considering such nominations the governing body or bodies shall give preference to projects that address affordable housing as set forth in the criteria established by the governing body or bodies. The application for certification as a qualified business for state benefits may be submitted to the department on any day in a form prescribed by the department. The applicable governing body or bodies may certify a residential builder as a qualified business to receive local benefits in connection with housing construction activity in an enterprise zone within its or their jurisdiction without making an application to the department to assure compliance with the Act, §2303.402.

(C) Forms. One original form must be submitted to the department to request certification as a qualified business, to request certification of new permanent jobs created or to request certification of retained jobs. One original form as provided by the Comptroller should be submitted to the Comptroller to request refunds of state sales and use taxes. The rules promulgated by the comptroller must also be followed to file a claim for tax refunds or reductions.

(D) Neighborhood enterprise associations. Applications to the department for certification of a neighborhood enterprise association may be filed with the department on any day.

(c) Completeness. Each application or claim must be as complete as practicable, and must include the fee set forth in subsection (d) of this section. The department will stamp or otherwise designate the date on which it receives each application. The date stamped or otherwise designated for any application received after the close of business on any day will be the next day. A day is as defined in the Act and §176.1 of this title (relating to General Provisions).

(d) Fees. A nonrefundable fee must be submitted in the form of a cashiers check made payable to the Texas Department of Economic Development/Texas Enterprise Zone Program, to recover the department's cost of providing direct technical assistance relating to the enterprise zone program. The check must accompany an application to the department in the amount of:

(1) $500 for an enterprise zone designation;

(2) $500 to amend the boundaries of a state designated enterprise zone;

(3) $500 for an enterprise project designation;

(4) $500 for application to change name or assume enterprise project designation as defined in §176.6(b) and §176.6(c) of this title (relating to Application Contents for an Enterprise Project);

(5) $500 to adjust the total number of new jobs as specified in the original application as defined in Texas Government Code, §2303.405 (Application Contents for an Enterprise Project);

(6) $500 for residential builder certification as a qualified business for a three-year period;

(7) $500 for certification as a neighborhood enterprise association;.

(8) $500 for each job certification application that is reviewed following the initial claim. The initial claim will be processed at no charge to the project.

(e) Staff consideration of applications. Staff shall review the application to determine if the application meets the eligibility criteria under the Act and this title. A job certification application may cover any consecutive twelve-month period. Businesses applying for designation and job certifications are subject to on-site inspection subject to the monitoring provisions of Section 2303.516 of the Act. Following staff review, the application will be submitted to the executive director for consideration. Written notification will be given to applicants of the final status of an application or job certification.

(1) Not later than 15 days after the receipt of the application for enterprise zone designation or for zone boundary amendment, the department shall notify the applicant that it has received the application and note any omissions or clerical errors that exist in the application. The applicant has at least ten days after the date it receives notice of application omissions or clerical errors or 45 days from the date the application is received by the department to correct any deficiencies and to submit corrections to the application to the department.

(2) Not later than five days after the deadline for accepting applications for enterprise project designation, the department shall notify the applicant that it has received the application.

(f) Consideration of enterprise zone and enterprise project applications.

(1) Complete or corrected applications for enterprise zone designation that staff determines meet the eligibility criteria set forth in the Act and this chapter will be considered by the executive director. The executive director may approve the application or remand it to the applicant for further action. If the executive director approves the application for enterprise zone designation, a negotiated agreement to designate the enterprise zone will be initiated by the department and must be fully executed no later than the 90th day after the day of receipt of the application. If the agreement is not executed before the 90th day after the day of the receipt of the application by the department, the application is considered to be denied. The department shall inform the governing body or bodies of the specific reasons for the denial.

(2) The department shall review the enterprise project applications that have qualified for consideration following staff review. The department will either approve the application, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate. Enterprise project designation becomes effective immediately upon department approval of an enterprise project application and action to grant the designation. Written notice of the designation will simultaneously be given to the applicant governing body's or bodies' designated liaison or liaisons and the enterprise project applicant. The notice will include an effective date and an expiration date of the project designation, which shall include the 90-day period immediately preceding the designation during which benefits under the designation may be allowed.

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

(1) the area has a continuous boundary;

(2) the area is at least one square mile in size but does not exceed the larger of the following:

(A) 10 square miles exclusive of lakes, waterways and transportation arteries; or

(B) 5.0% of the area of the municipality, county or combination of municipalities or counties nominating the area, but not more than 20 square miles, exclusive of lakes, waterways and transportation arteries; and

(3) the area is a depressed area as defined under §176.1(c)(9) of this title.

(b) The department may not designate an area as an enterprise zone if in the jurisdiction of the municipality or county nominating the area as an enterprise zone there are three enterprise zones in existence that were nominated as enterprise zones by the governing body of that municipality or county.

(c) Areas receiving designation from the federal government under the federal empowerment zones initiatives are automatically state enterprise zones without further qualification and are valid for the term permitted by federal law, as authorized by the Act, §2303.109(b). Designation of these areas as state enterprise zones does not affect the number of state enterprise zones a governing body may have as authorized by the Act, §2303.112.

(d) The governing body of a county may not nominate area in a municipality or a municipality's extraterritorial jurisdiction to be included in a zone unless the municipality is a joint applicant with the county. However, a county with a population of 750,000 or more, according to the most recent federal census, may nominate area in a municipality's extraterritorial jurisdiction to be included in a zone without the consent of municipality, as authorized by the Act, §2303.103(e).

(e) Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology and certification of the data. The authorized data source for population estimates is the State Data Center. The authorized data source for labor force data is the Texas Workforce Commission. Data will be considered current from the State Data Center and the Texas Workforce Commission if they are the most recently published estimates or if the enterprise zone application containing the data is received by the department before the 61st day after the date revised estimates of that data are published. An industrial park may be included as part of the enterprise zone without averaging in the unemployment and poverty data. However, data will be required if part of the zone includes an area which is outside the industrial park but within the same census area. The industrial park may not exceed 25% of the proposed zone area. To show an area has been designated as an industrial park the applicant must include documentation of official action taken by the governing body.

(1) Unemployment data. The average rate of unemployment for the area nominated during the most recent 12-month period for which data is available from the Texas Workforce Commission must be at least one and one-half times the state average for that period. Computation of the average unemployment rate for the proposed enterprise zone area will require choosing the smallest area that contains the zone for which unemployment data is available from the Texas Workforce Commission.

(2) Loss of Population. Loss of population may be calculated using population estimates for the applicant's jurisdiction produced by the Texas State Data Center. The 12% loss of population is the accumulated population loss experienced during the most recent six-year period for which data is available. The alternative 4.0% population loss is the loss of population experienced during the most recent three-year period for which data is available.

(3) Income data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone. In order to meet the low-income criteria, the smallest number of census areas that entirely contain the zone must reflect that at least 70% of the

residents or households in that zone have below 80% of the median residents or household income for the locality or state, whichever is lower. To determine a low-income poverty area, at least 20% of the residents of the zone must have an income below the national poverty level as determined by the most recent available census data that contains the zone area. Census tracts, block groups, or other official census areas may be used to show poverty rates.

(4) Chronic abandonment or demolition. To qualify, the applicant must demonstrate to the department that 25% or more of the structures in such area are found by the governing body to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A) is abandoned;

(B) does not have plumbing;

(C) has been condemned or cited for building or fire code violations by the appropriate city authority;

(D) is in an inadequate state of repair under applicable public health, safety, fire, or building codes;

(E) is the subject of a tax or special assessment delinquency stated as a percentage of total taxes assessed, which exceeds the fair market value of the land involved and the improvements thereon; or

(F) is functionally or economically obsolete as determined by a qualified appraiser.

(5) Substantial tax arrearages. The applicant must certify and submit evidence that within the proposed zone area, at least 25% of the commercial or residential taxes have gone unpaid and have been delinquent for at least one year. For purposes of determining substantial tax arrearages, the tax rolls of the applicable city or county nominating an area as an enterprise zone must be used.

(6) Substantial loss of businesses or jobs. A substantial loss of businesses or jobs is defined as a loss of at least 20% over the most recent one-year period or a loss of 30% over the most recent three-year period in the proposed zone area. The applicant must seek advance approval of documentation to be provided to the department.

(7) Declaration of an area as a state or federal disaster area. The applicant must provide documentation by the applicable state or federal government that the area has been declared a state or federal disaster area within the most recent 18-month period.

(8) Substantial increase in individuals under the age of 18 arrested for criminal activity. The applicant must provide data from the appropriate law enforcement authority or authorities that the proposed zone area has had a substantial increase in the number of individuals younger than 18 years of age arrested due to criminal activity. A substantial increase in arrests is defined as at least a 20% increase over the most recent three-year period.

(f) Citizen participation. The department will not approve the designation of an area as an enterprise zone unless:

(1) the governing body of the applicant shall first notify the department of the date it will hold a public hearing as required under the Act, §2303.103, and these rules for the purpose of nominating an area as an enterprise zone or to amend the boundaries of a designated enterprise zone by encompassing additional land area into the zone. The notice to the department shall be given in writing not less than seven days prior to the date of the public hearing; and

(2) notice of such hearing is given to the public by publishing once in a newspaper of general circulation in the municipality or county or combination of municipalities or counties and posting a copy of the same at the city hall or county courthouse not later than seven days prior to the date of the hearing. Such notice shall contain a description of the area proposed by the municipality or county or combination of municipalities or counties to be designated as an enterprise zone, and the date, time, and location of such hearing. The description of the area should be worded so that residents of the area and other interested parties may reasonably identify the area to be discussed at the public hearing. The notice shall also encourage all interested parties, including residents of the proposed zone to present their views at the hearing. The hearing must include a presentation on the proposed location of the zone and the provisions for any tax or other incentives applicable to business enterprises in the zone. A municipality or county or combination of municipalities or counties must adopt the enterprise zone nominating ordinance or order within 180 calendar days of the date the last public hearing was held. Further, the application for zone designation must be received by the department within 90 calendar days of the date of final approval of the nominating ordinance or order, or a new public hearing must occur and a new nominating ordinance or order must be enacted.

§176.4. Application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone, application to amend the boundaries of a designated enterprise zone, must be typed directly on the form provided by the department and must include all applicable attachments as specified in the application.

(1) The participants. The application must provide information about the applicant governing body or bodies, their designated representative and their liaison to communicate and negotiate with the department, the administrative authority and its representative, if applicable, and the neighborhood enterprise association and its representative, if applicable.

(2) The applicant. If a joint application is being submitted by a municipality and county, or a combination of municipalities and/or counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the applicant certifying that the contents of the application are true and correct to the best information and belief of the applicant and that the applicant has read the Act and this chapter and is familiar with the provisions of the enterprise zone program;

(B) a certified copy of the ordinance or order as appropriate of the governing body of the applicant nominating the area within its jurisdiction as an enterprise zone under the Act, containing the information set forth in the Act, §2303.104, and identifying by job title the liaison or liaisons and representative or representatives in accordance with paragraph (1) of this subsection. The ordinance or order must specify any incentives to be provided by the municipality or county to business enterprises in the zone, including the conditions and circumstances governing the sale of surplus public buildings or vacant public lands at less than fair market value and the public purpose that will be achieved by the sale. At least three incentives must be offered in the zone which are not offered elsewhere throughout the jurisdiction. At least one incentive must be financial in nature. The ordinance or order may nominate more than one zone, but separate applications must be submitted for each zone;

(C) if a joint application, a description and certified copy of the agreements between joint applicants providing for the joint administration of the zone. An agreement must include a statement

that each applicant is committing one of its three allowed enterprise zone designations to the joint application.

(3) Zone Administration. The application must contain the following information and documentation concerning administration of the zone:

(A) a brief description of how the zone will be managed, including the unit or department within the municipality or county responsible for oversight of zone activities and person or persons responsible for zone administration within the municipality or county;

(B) the procedures for negotiating with residents, community groups, and other entities affected by the zone and qualified businesses within the zone;

(C) a description of the administrative authority, if any, including a list of members with representation as set forth in the Act, §2303.202; and

(D) a description of the functions and duties of the administrator or administrative authority, if any, including decision-making authority and the authority to negotiate with affected entities.

(4) The neighborhood enterprise association, if any. The application must contain the following information and documentation concerning the neighborhood enterprise association, if any:

(A) a description of the neighborhood enterprise association, including a list of officers, with the street address, mailing address, and telephone number of each;

(B) a statement describing the functions, programs, and services to be performed by designating neighborhood associations in the zone at the time of application; and

(C) a copy of the proposed agreement between the neighborhood enterprise association and the applicant to include, if applicable, a statement on the amount of dedicated revenue from a tax increment fund to pay the neighborhood enterprise association for providing services or carrying out authorized projects. The term of an agreement with a neighborhood enterprise association may not exceed 10 years.

(5) The zone. The application must contain the following information and documentation concerning the proposed zone:

(A) a map of the proposed enterprise zone location which clearly shows zone boundaries, including existing streets and highways, rail, air facilities, and industrial parks;

(B) an official census map of the proposed enterprise zone area that clearly identifies and reflects the most recent census data areas within the proposed zone boundaries applicable to the eligibility criteria referenced in the application;

(C) certification of the geographic makeup of the proposed zone including the total square miles in the proposed enterprise zone, the total square miles of each applicant's jurisdiction, and the percentage of the jurisdiction in the zone;

(D) a summary, in tabular form, of the data qualifying the area for an enterprise zone and supporting data as required by the Act and this chapter;

(E) a statement setting forth the economic objectives, the current business and labor conditions, and the marketing strategy for the zone;

(F) an annualized seven-year estimate of the economic impact of the zone that reflects at least the number of jobs and capital investment expected as a result of the designation of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county. The estimate must be provided in tabular form and must describe the basis and assumptions used.

(6) The local business incentives.

(A) The application must contain additional information about the incentives specified in the ordinance or order.

(B) For the purposes of tax abatement under the Property Redevelopment and Tax Abatement Act (Tax Code, Chapter 312), an enterprise zone designated after August 28, 1989, is considered to be a reinvestment zone without further designation and effective September 1, 1995, the reinvestment zone is effective for the term of the enterprise zone. In accordance with Chapter 312.204 and 312.206 of the Tax Code, property tax abatement agreements between the governing body of each taxing unit and property owners in an enterprise zone, may, but are not required to, contain terms that are identical to those contained in the agreement with the municipality, county or both. The terms of the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

(C) Land sold at less than fair market value. A municipality or county may sell a surplus building or vacant land in the zone at less than fair market value if the governing body of the municipality by ordinance or the governing body of the county by order adopts criteria specifying the conditions and circumstances under which the sale may occur and the public purpose that will be achieved. The surplus building or vacant land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day the sale occurs. Factors to be considered in evaluating the local effort on the part of public entity include provisions of publicly owned land for development purposes including residential, commercial or industrial development.

(7) Public hearings. The application must contain a transcript or tape recording of all public hearings on the zone, including copies of the published notices and copies of the publisher's affidavits.

(b) An application nominating an area or portions of an area for enterprise zone designation that is approaching a designation expiration date or for which designation has previously expired must follow the application process required of a first-time application for designation and will further be required to meet filing requirements under §176.2(b)(1)(B) of this title (relating to Filing Requirements for Applications and Claims).

(c) The department may require additional information at any time for evaluation purposes.

§176.5. Requirements for Designation of Enterprise Projects.

(a) The department may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §2303.402, and this chapter;

(2) the qualified business is located in or has made substantial commitment to locate in an enterprise project eligible enterprise zone;

(3) the project demonstrates viability as determined by the department;

(4) the applicant's governing body or bodies have demonstrated that a high level of cooperation between public, private, and neighborhood entities exists in the zone; and

(5) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the zone.

(b) The department may approve the assumption of a state-designated enterprise project that leases or transfers ownership to another entity that will continue operations in the enterprise zone in the same way that was originally committed to in the initial enterprise project application or which otherwise demonstrates to the satisfaction of the department that the designation assumption is warranted to avoid disruption of operations and loss of jobs.

(c) For job creation a business must be seeking to create new jobs, or for an existing business seeking to expand and increase their current level of employment in Texas. The program, however, does not allow benefit for moving existing jobs from one Texas city to another within the state.

(d) For job retention a business must submit documentation and receive prior approval of documentation in order to qualify for using one of the following criteria:

(1) that permanent employees will be permanently laid off; or

(2) the business will permanently close down; or

(3) the business will relocate out of state; or

(4) a 10% increase in production capacity will occur; or

(5) a 10% decrease in overall cost per unit produced will occur;

(6) the business facility has been legitimately destroyed or impaired due to fire, flood, tornado, hurricane, or any other natural disaster.

(e) In any case, for job retention, the business must maintain the same level of employment that existed 90 days prior to the date of application. Any of the retained jobs that are subsequently vacated and refilled must meet the 25% ED/EZR hiring requirement.

§176.6. Application Contents for Designation of an Enterprise Project.

(a) The application for designation of an enterprise project must contain the following information and documentation, as applicable. If an enterprise project application is being filed on behalf of a business to be located in an enterprise zone that was nominated by more than one governing body, the information must be included for each applicant governing body.

(1) The participants. The application must contain the name, street address, mailing address, and telephone number for each of the following involved in the designation of qualified businesses as enterprise projects:

(A) the applicant governing body, applicant governing body's representative, and its designated enterprise zone liaison;

(B) the qualified business, qualified business's representative;

(C) if any, the administrative authority, the administrative authority's representative; and

(D) if any, the neighborhood enterprise association, and neighborhood enterprise association's representative.

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the qualified business and a statement signed by the applicant governing body or bodies certifying that the contents of the application are true and correct to the best information and belief of the qualified business and that the qualified business has read the Act and this chapter and is familiar with the provisions thereof;

(B) a certified copy of a resolution from the applicant governing body or bodies nominating the qualified business for designation as an enterprise project and containing the findings required by the Act, §2303.404;

(C) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of the Act, §2303.102, including:

(i) the tabular summary from the appropriate enterprise zone application, or most recent enterprise zone amendment application, that demonstrates the project is located in an enterprise project eligible enterprise zone. Enterprise zones that were not enterprise project eligible enterprise zones at the time of designation must provide appropriate supporting data showing they are now an enterprise project eligible enterprise zone; and

(ii) a city street map which clearly identifies the enterprise zone area and the location of the proposed project; and

(iii) a copy, or an excerpt from a copy of the census map from the enterprise zone application submitted to nominate the area for zone designation, which clearly identifies the location of the proposed project and the census area where it is located;

(D) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located including:

(i) any agreements made since the designation of the zone between affected entities;

(ii) minutes of meetings or other written documents that outline the means of establishing cooperation and communication between any affected entities in the zone where the project will be located; if regular meetings are scheduled, state when the meeting will occur;

(iii) a description of the business activity that has occurred within the last year of designation of the zone or within the last year prior to designation of the zone, if the zone has been designated for less than one year. This description must demonstrate the cooperation among the public and private sectors and information on the number of jobs created and retained and capital investment made as a result of the business activity;

(E) a description of the local effort made by the municipality or county, the administrative authority, if any, and other affected entities to achieve development and revitalization of the zone as described in the Act, §2303.405(c). This includes a brief historical description of the trade and business conducted in the zone and a brief historical description of the qualified business' activities in other locations with respect to its location in the zone.

(3) The project. The application must contain the following information and documentation concerning the proposed project:

(A) a description and introduction of the business applying for the project designation, which includes:

(i) a copy of the articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates. The name under which the business is applying for designation must be the same as the business paying state taxes and creating and/or retaining jobs to obtain program benefits;

(ii) the principal owners and history of the business;

(iii) a corporate resolution that provides signatory authority to a person or persons to sign any contracts or forms on behalf of the business for the enterprise project application;

(iv) the number of business locations, total sales, and number of employees in the State of Texas, the United States, and outside the United States; and

(v) a description of the business' products and services;

(B) the plans of the business for expansion, revitalization, and other activity in the zone for the five-year designation period of the project including:

(i) a description of the project location and intended use;

(ii) a summary of short and long-term plans for expansion in the zone;

(iii) the amount of capital investment to be made in the zone and the source of funding for the investment;

(iv) the status of any required local, state, or federal permits or licenses that must be obtained to enable the project to be initiated and completed as represented in the enterprise project application;

(v) a tabular summary of the classification titles and salary ranges of full-time, part-time, and seasonal jobs to be maintained, new jobs to be created, and jobs to be retained, if applying for retained job benefits; and

(vi) the total projected annual payroll for the jobs that are being considered for benefit;

(C) commitments from the business that include:

(i) a completed form, to be provided by the department, certifying the business as a qualified business;

(ii) a statement that the business is located entirely in the enterprise zone and that it will maintain separate payroll and tax records of the business activity conducted in the zone;

(iii) the percentage of new or additional employees hired to occupy the jobs being claimed for benefit that are residents of any zone within the governing body's or bodies' jurisdiction or that are economically disadvantaged; and

(iv) a description of the efforts of the business to develop and revitalize the enterprise zone as described in the Act, §2303.405(e).

(b) A designated enterprise project may apply to the department for a name change. To receive department approval for a name change, the project must submit through the applicant governing body or bodies:

(1) a written explanation by the designee of the reasons for the name change, the date the name change occurred, and any changes to the commitments made by the business in the original enterprise project application, if applicable; and

(2) if applicable, a copy of the certificate of amendment to the articles of incorporation and the amended articles of incorporation filed with the secretary of state of the State of Texas or the dba statement under which the business operates; and

(3) written acknowledgment from the applicant governing body or bodies that it is aware of the name change for the project as a qualified business operating in an enterprise zone within its jurisdiction.

(c) Only during the time of its active designation may a lessee or purchaser of a qualified business, which has been designated as an enterprise project, apply to the department to assume the enterprise project designation of the qualified business leased or purchased. The request must be made through the appropriate enterprise zone governing body or bodies, which must take official action, in the form of a resolution, approving of the assumption of the enterprise project designation by the lessee or purchaser. The resolution should be submitted along with the following information to the department:

(1) a written commitment from the qualified business that is the designated project to the governing body or bodies of the enterprise zone where the project is located and to the department to release all claim to the project designation and any benefits represented thereunder and agreeing to the assumption of the designation as of a specific date by the lessee or purchaser seeking to assume the designation; and

(2) a written certification from the lessee or purchaser on a form to be provided by the department that the lessee or purchaser will be a qualified business under the Act, §2303.402; and

(3) a letter of commitment from the lessee or purchaser addressed to the enterprise zone governing body or bodies and to the department like the letter of commitment filed in the original application for project designation by the initial qualified business. The letter should outline any modifications proposed by the lessee or purchaser to the original commitments made by the qualified business holding the project designation, including capital investment and jobs to be created, or retained, as applicable, and a statement as to why the assumption is essential to their operations in the enterprise zone; and

(4) a copy of the lessee's or purchasers' articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates and financial statements to satisfy concerns about the ability of the lessee or purchaser to fulfill its commitments.

(d) Only during the time of its active designation may a designated enterprise project apply to the department for an adjustment to the total number of jobs allocated in their original application, in accordance with the Act, §2303.407 (regarding Allocation of Jobs Eligible for Tax Refund). The enterprise project may not make more than one adjustment to the job allocation during the five year designation of the project. The adjustment of a project designation does not extend the original designation period. To receive department approval for an adjustment to the job allocation, the project must submit through the applicant governing body or bodies:

(1) a written request from the applicant governing body or bodies to adjust the total number of jobs originally allocated to the enterprise project operating in an enterprise zone within its jurisdiction;

(2) a written explanation by the designee of the reasons for the adjustment and any changes to the commitments made by the business in the original enterprise project application, if applicable;

(3) on a form provided by the Department, the designee must provide a breakdown of the types of new jobs by classification or title and the salary range or hourly-rate for each position for which

benefit is sought (Note: State sales and use tax paid on qualifying items and adjusted jobs created within 90 working days prior to the date of application may be considered for refund); and

(4) designee must submit documentation that original commitments, i.e., the projected number of jobs and investment have been met or will be met as specified in their original application.

§176.7. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under the Act, §2303.301, a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body or the department for certification as a neighborhood enterprise association.

(b) The application for certification of a neighborhood enterprise association must include the following:

(1) a certified statement signed by the chief executive officer of the association which contains the following:

(A) that the proposed association is the only one for the geographic neighborhood area being represented;

(B) that the association membership is composed of residents of the enterprise zone;

(C) that the association is a nonprofit corporation organized under the Texas Non-Profit Corporation Act;

(D) that the association is eligible for federal tax exemption status under the Internal Revenue Code of 1986, §501(c);

(E) that the incorporators have published in a newspaper of general circulation in the municipality or county an explanation of the proposed new association and their rights in it and that a copy of the association's articles of incorporation and bylaws are available for public inspection at the office of the city manager or comparable municipal officer or at the county judge's office, as applicable;

(2) a map showing that the geographic neighborhood area has a continuous boundary, exclusive of lakes and waterways;

(3) a listing of the officers, including the chief executive officer, the board of directors, including the street address, mailing address, and telephone number of each;

(4) a certified copy of the articles of incorporation and the bylaws of the association;

(5) a certified copy of the governing body's resolution granting certification as a neighborhood enterprise association; and

(6) in the event that the application is to the department for certification of an association, documentation that shows how an association has made diligent effort, before applying to the department, to obtain certification from the applicable governing body or bodies and why certification was not obtained from the applicable governing body or bodies.

§176.8. Approval Standards.

(a) Final approval standards for designation of enterprise zones. Within 10 business days of final approval of the designation of a zone by the executive director, the staff shall present the form of the negotiated agreements to the governing body or bodies of the applicant. Such agreements must include designation of the zone and the administrative authority, if any, and its function and duties and any other information required under the Act and this chapter. The department shall complete the negotiations and sign the agreements in accordance with the Act, §2303.107.

(b) Approval standards for designation of enterprise projects. The department shall designate qualified businesses as enterprise projects on a competitive basis. Applications for designation of enterprise projects will be accepted on a quarterly basis on or before the following application deadlines:

(1) The application deadline for receipt of enterprise project applications by the department is 5:00 p.m., Austin, Texas time, on the first business day of every third month beginning with September 1995. The department may designate no more than 85 enterprise projects during any fiscal biennium, as specified by the Act, §2303.403.

(2) The department will designate qualified businesses as enterprise projects under the following conditions:

(A) The maximum number of qualified businesses that may be nominated by a governing entity(s) and designated as enterprise projects located in qualified enterprise zones during any state fiscal biennium is:

(i) Four, plus two additional bonus projects the department may award in a municipality or a county or any nominating combination thereof with a population of less than 250,000.

(ii) Six, if the governing body of the enterprise zone is the governing body of a municipality or a county with a population of 250,000 or more.

(iii) The enterprise project designations will be granted by the department on a first-come, first-served basis, subject to the limitations in this section and based upon the availability of enterprise project designations. Although enterprise project designations will be awarded on a first-come, first-served basis, applications will be scored for the purpose of determining if the project meets the minimum threshold score of 30 points, as well as for awarding bonus enterprise project designations as defined in section (B) following.

(B) Each eligible enterprise project application will be scored against other eligible enterprise project applications approved during a quarterly deadline, as specified in §176.8 (b) (1) of this chapter. If an enterprise project application scores within the top quartile (25%) of the other eligible applications approved in a quarterly deadline, the nominating enterprise zone authority with a population of less than 250,000 may nominate a qualified business for a bonus enterprise project designation on any subsequent quarterly deadline within the state fiscal biennium. Designations will be awarded only if enterprise project designations are available. The bonus enterprise project applications will be scored in the same manner as all other enterprise project applications received on each quarterly deadline. If a bonus project application scores within the top quartile (25%) of all the bonus and regular applications received on a quarterly deadline, the nominating enterprise zone authority with a population of less than 250,000 may nominate an additional bonus enterprise project for designation on any subsequent quarterly deadline within the same fiscal biennium. The bonus enterprise project designations may only be located in an enterprise zone within the governing body's jurisdiction from which the bonus enterprise project designation was earned, subject to enterprise project availability. Each application submitted to the department will be evaluated on the commitments made by the community and qualified business as specified under the Act, §2303.405. In no case may an enterprise zone governing body have a combined total of more than six enterprise project designations, including regular and bonus designations, during the state fiscal biennium.

(C) In the event the number of enterprise project applications submitted during a quarterly round exceeds the number of remaining designations that may be made during the state fiscal biennium, as specified under §176.8 (b) (1) of this chapter, the applications that score the highest based upon the evaluation system specified in this chapter will be awarded designations.

(3) The criteria for evaluating enterprise project applications will be based on weighting as specified by the Act, §2303.406 (b). The department will make its decision on a weighted scale in which:

(A) 50% of the evaluation weight will be evenly divided between the economic distress of:

(i) the enterprise zone in which a proposed enterprise project is or will be located; and

(ii) the area within the enterprise zone where the project is or will be located. In the event the zone was designated using primary or secondary distress criteria that are not available on a sub-community or sub-enterprise zone level, the economic distress of the zone will be evaluated using the data at the most discrete level available.

(B) 25% of the evaluation depends on the local effort to achieve development and revitalization of the enterprise zone. This evaluation criteria is designed to measure the level of local support on the part of the community or communities nominating the qualified business and the qualified business applying for enterprise project designation. This includes, but is not limited to, such factors as set forth in the Act, §2303.405 (c), §2303.405 (d), and §2303.405 (e),§2303.516 (a) (b) ; and

(C) 25% of the evaluation depends on the evaluation criteria as determined by the department, which will be evenly divided between:

(i) the amount of capital investment and the number of jobs to be created or retained by the qualified business, as applicable; and

(ii) the type and wage level of the jobs to be created and retained by the qualified business. The wage level of the jobs will be evaluated on how they compare to the regional average salary of a high wage/high skill job.

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. However, if an area is designated as a federal empowerment zone or a sub-designation of that iniatitive, the area may be designated for a longer period not to exceed that permitted by federal law. Any designation of an area as an enterprise zone, shall remain in effect during the designation period beginning on the date of the designation and ending on the earliest of:

(A) September 1 of the seventh calendar year following the calendar year in which such date ending the enterprise zone designation occurs, or in the case of federal enterprise zone designation, the date federal designation period ends, or

(B) following a public hearing, the date the department removes the designation of zone for the following reason:

(i) the area no longer qualifies for designation as an enterprise zone as forth in the Act, §2303.102 or this chapter; or

(ii) the department determines that the governing body has not complied with commitments made in the ordinance or order nominating the area as an enterprise zone.

(2) A qualified business may be designated as an enterprise project for a maximum period of five years. The designation of a qualified business as an enterprise project shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) five years after the date the designation is made; or

(B) the last day that completes the original project designation period of a qualified business that has assumed the designation of the enterprise project through a lease or purchase of a designated qualified business for the purpose of continuing its operations in the applicable enterprise zone under a name or legal structure other than that of the qualified business originally receiving the designation and that has met the requirements of the department to qualify for the assumption, as specified under §176.6 (c) of this title. The assumption of a project designation or a name change by a qualified business which must be made during the 5-year period, does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the earliest of the last day of the original five-year designation; or

(C) following a public hearing by the governing body or bodies that nominated the qualified business for enterprise project designation, the date the department determines that the qualified business is not in compliance with any requirement for designation as an enterprise project. The governing body or bodies will be deemed to have held a public hearing if the removal of the designation of an enterprise project is included as an agenda item of a regular session in which the governing body or bodies meet to take official action. The department will act to dedesignate an enterprise project upon the written request of a governing body or bodies after:

(i) the governing body or bodies has provided written notice to the qualified business that has been designated an enterprise project, 30 calendar days in advance of the proposed action, that the governing body or bodies is initiating proceedings to remove the project designation. The notice must specify the reason why the governing body or bodies believes the project is in noncompliance and specify the time, date and location where the enterprise zone governing body or bodies plans to take official action to request the department to remove the designation. A copy of the notice and copies of any written responses to the notice by the qualified business must be provided to the department;

(ii) a public hearing is held and a resolution adopted that requests the department to remove the project designation as of a specific date. The resolution must specify the conditions that caused the dedesignation process to be initiated and include a finding that written notice as specified under this title has been given;

(iii) following the governing body's or bodies' written request to the department to dedesignate an enterprise project, the qualified business may appeal the governing body's or bodies' action to the department's executive director. Such appeal must be made in writing within thirty days of the governing body's or bodies' written request to the department for dedesignation. Upon receipt of such appeal, the executive director shall act upon the appeal within 30 days from the date the appeal is received.

(d) Approval standards for certification of a qualified business. Qualified business certification and the certification of new or retained jobs may be granted by the local governing body or bodies for purposes of local benefits, if applicable, or the department, for purposes of state benefits, as applicable, in accordance with the Act. The department shall provide the assistance the Comptroller requires in administering this section.

(1) Once certified by the local governing body, a qualified business must apply to the local governing body for local tax benefits.

(2) The governing body or bodies must provide written notification to the department of each commitment made to a qualified business for a one-time state sales tax refund, authorized under the Tax Code, §151.431, or state franchise tax refund, under the Tax Code, §171.501. Once certified a qualified business by the department, the business must apply to the Comptroller for state sales tax refunds, under the Tax Code, §151.431, or state franchise tax refunds, under the Tax Code, §171.501, as applicable. The written notification to the department must include:

(A) a copy of the request for the incentive sent to the governing body or bodies by the business;

(B) an original or a certified copy of the resolution adopted to nominate the qualified business and setting the nomination period during which the qualified business will create or retain the required jobs to receive the intended benefit; and

(C) a letter to the department from the governing body or bodies to the department forwarding the resolution and officially nominating the business.

(3) A business that is an enterprise project that is certified a qualified business must also apply to the Comptroller for state sales tax refunds, under §151.429, Tax Code or state franchise tax reductions, under §171.1015, Tax Code, as applicable.

(4) Refunds of state sales or use taxes provided to an enterprise project under the Tax Code, §151.429, are conditioned on the enterprise project maintaining at least the same level of employment of qualified employees as existed on the date it was certified as eligible for a refund for a period of three years from that date. The department shall annually certify to the Comptroller and the Legislative Budget Board whether that level of employment of qualified employees has been maintained. In the event that the department certifies that such a level has not been maintained, the Comptroller shall assess that portion of the refund attributable to any such decrease in employment, including penalty and interest from the date of refund.

(5) A state-designated project may request certification of its jobs created or retained, as specified in §176.2 (b) (6) of this title, by the department on an annual or semi annual basis during the applicable five year designation period within the limits of the number of jobs allocated at the time of its project designation in accordance with the Act, §2303.407. An enterprise project designated after August 31, 1995 may not receive a tax refund under the Tax Code, §151.429, or a tax reduction under the Tax Code, §171.1015, before September 1, 1997.

(6) Only qualified businesses that have been certified by the department to the Comptroller and the Legislative Budget Board are eligible for a franchise tax reduction under the Tax Code, §171.1015.

(f) Approval standards for certification of a builder as a qualified business.

(1) A builder must complete the enterprise project application form and other information as stipulated in this subsection to be eligible to be designated an enterprise project. A builder that meets the criteria in this chapter is eligible for the benefits allowed a qualified business under the Act. To be eligible to apply for enterprise project designation, the builder or consortium of builders that is certified as a qualified business must have permanent offices located in Texas. In addition to the information required of a business applying for enterprise project designation under §176.6 of this chapter, the applicant must provide:

(A) the name of the builder, name of company under which building occurs, principle business location, address of office serving the enterprise zone construction activity, telephone numbers, including the telecommunication devices for the deaf (TDD) number, if available, and facsimile numbers if applicable;

(B) five written references from satisfied homeowners for whom properties were constructed by the builder in the three years preceding the date of the application;

(C) current bank references and bank references for the past three years;

(D) financial evidence including two years of tax returns or other satisfactory evidence to substantiate financial viability as a builder; and

(E) documentation that supports participation in a 10-year insured warranty program.

(2) A builder proposing a housing project in an enterprise zone, must provide a complete description of the new residential housing to be constructed, including a statement concerning whether the housing constitutes affordable housing under the governing body's or bodies' criteria, preliminary building plans, the location(s) of planned construction, number of units to be constructed, estimated sales price of homes, statement of affirmative action participation in employment practices, a statement regarding the coordinated use of other federal, state, or local funds, and other enhancements to the project. The applicant builder(s) must meet all requirements other than physical headquarters location in the zone and hiring requirements required of other enterprise projects.

(g) Approval standards for certification of neighborhood enterprise associations.

(1) Such standards will be determined and final certification may be granted by local governing body or bodies or the department as applicable in accordance with the Act, §2303.302.

(A) The governing body or bodies or the department may not grant its approval unless the association has hired or appointed a chief executive officer.

(B) The department may not grant state certification to a neighborhood enterprise association, unless that association has first made a diligent effort to obtain certification from the applicable enterprise zone governing body or bodies and the association provides documentation to the department of that effort to obtain local certification and the reasons the association was unable to obtain certification from the applicable governing body or bodies.

(2) The neighborhood enterprise association may implement projects, other than those enumerated in the Act, by submitting an application to the governing body or the state for approval of the specific project or activity. Applications submitted for approval to the governing body or the state must describe the nature and benefit of the project, including:

(A) how it will contribute to the self-help efforts of the residents of the area involved;

(B) how it will involve the residents of the area in project planning and implementation;

(C) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and

(D) how it will enhance the enterprise zone in one of the following ways:

(i) by creating permanent jobs;

(ii) by physically improving the housing stock;

(iii) by stimulating neighborhood business activity; or

(iv) by preventing crime.

(3) An existing responsible unit of government may contract with a neighborhood enterprise association to provide services in an amount corresponding to the amount of money saved by the unit of government through this method of providing a service.

(h) If the governing body or bodies does not specifically disapprove of a project proposed by the association before the 45th day after the day of the receipt of the application, it shall be considered approved. If the governing body or bodies disapproves of the application, it shall specify its reasons for this decision and allow 60 days for the applicant to make amendments.

(i) The association may enter into contracts and participate in joint ventures with the state or a state agency or institution. The association may receive money without approval of the governing body or bodies.

§176.9. Reporting Requirements.

(a) Annual reports.

(1) Each municipality, county, or combination of municipalities and/or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before October 1 of each year. The report must be in a form prescribed by the department and contain the information listed in the Act, §2303.205 (c). The information in the report will be used by the department to compile an annual report to the governor, legislature, and the Legislative Budget Board by December 15 as required by the Act. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(2) Each state agency shall annually review the rules it administers that may negatively impact the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce in enterprise zones, or that may otherwise affect the implementation of the Act, and shall report the results of each review to the department no later than October 1 of each year. The department shall disseminate the results to enterprise zone governing bodies and others as necessary to advance the purposes of the Act.

(b) Other reports or documents.

(1) The applicant shall furnish additional information, reports, or statements as the department may from time to time request in connection with the Act and this chapter.

(2) No later than September 1 of each year, a neighborhood enterprise association shall furnish an annual statement to the applicable governing body or bodies on the programmatic and financial status of any approved project and an audited financial statement of the project. The governing body or bodies shall include information about all reports filed by the neighborhood enterprise association in its annual report on the applicable enterprise zone due the department by each October 1 during the zone designation period.

§176.10. Boundary Amendments.

(a) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by ordinance or order adopted following a public hearing, may apply to the department to amend the original boundaries subject to the following limitations.

(1) The boundaries as amended must not exceed the size limitations and boundary requirements set by the Act and may not exclude any part of the zone within the boundaries as originally designated.

(2) The enterprise zone, including any added land area, must continue to meet all unemployment or other economic distress criteria for enterprise zone designation throughout the zone as required by the Act and this chapter.

(3) The governing body or bodies may not make more than one boundary amendment during each calendar year of the enterprise zone designation agreement.

(b) The governing body or bodies must provide certifications and evidence of public hearing and notices with respect to the boundary changes in the same form as required to make application for enterprise zone designation. As a result of a public hearing or other reasonable considerations necessary to meeting zone qualifications, zone boundaries proposed in the public hearing may be amended to delete land area before zone designation is approved. If the hearing is for a zone boundary amendment, no land previously designated as part of the enterprise zone may be deleted. Area may not be added to a proposed enterprise zone unless a public notice is posted and a public hearing is held pursuant to §176.3(f) of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202465
Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 936-0177

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 7. GAS UTILITIES DIVISION

The Railroad Commission of Texas proposes the repeal of §§7.1-7.11, relating to Subchapter A, Procedural Rules, and §§7.40-7.43, 7.46, 7.48, 7.50-7.52, 7.54-7.59, relating to Subchapter B, Substantive Rules, and proposes new §§7.110 and 7.115 in new subchapter A, relating to General Rules; new §§7.201, 7.205, 7.210, 7.220, 7.225, 7.230, 7.235, 7.240, and 7.245 in new subchapter B, relating to Special Procedural Rules; new §§7.301, 7.305, 7.310, and 7.351 in new subchapter C, relating to Records and Reports; Tariffs; Gas Utility Tax; new §§7.450, 7.455, and 7.465 in new subchapter D, relating to Customer Service and Protection; new §§7.501, 7.503, 7.5212, 7.5213, 7.5252, 7.5414, 7.5519, 7.5525, and 7.5530 in new subchapter E, relating to Rates and Rate-Setting Procedures; and new §7.7001 in new subchapter G, relating to Code of Conduct. The proposed new rules will join new §7.315 and §7.460 (as renumbered from their old rule numbers §7.44 and §7.60, respectively), proposed in separate rulemakings, regarding filing of tariffs and suspension of gas utility service disconnection during extreme

weather emergency. The Commission also has planned other rulemakings for other subchapters within this new organizational scheme; these will be proposed in the future.

The Commission proposes the repeals and new sections to change the title of chapter 7 to Gas Services Division; to add new subchapters and reorganize the rules; to update statutory citations; to correct the names of the Gas Services Division and the Office of General Counsel; and other similar nonsubstantive changes such as changes in punctuation and wording to clarify the rule requirements such as specifically stating who must perform the activities discussed, etc.

The main changes are: New §7.115 (current §7.1) consolidates all the definitions, which had been scattered throughout the rules, into one rule to avoid duplication and possible conflict between definitions. In §7.115(5), the definition of "bulletin" is amended to correct the name of the Gas Services Division and to change the publication of this bulletin from paper copies which are mailed out to persons who have paid a fee for the service to publication on the Commission's web site, which is available at no cost to all persons. The Division will maintain paper copies for public inspection and copying, but will no longer mail out copies. In §7.115(25), a new definition of "person" has been added, which refers to the definition found in Texas Utilities Code, §101.003(10).

Another substantive change is found in §7.201 (current §7.2) which allows for filing of responsive pleadings and other documents by facsimile transmission at the discretion of the hearings examiner. The Commission finds that this will be a more efficient business practice for both the public and the Commission.

The Commission proposes eliminating the requirement in proposed new §7.210 (current §7.6) that the information be sworn to, but rather will require that certain information be included in a statement of intent. The Commission does not gain any added value by requiring that the information be sworn to and sees this requirement as an unnecessary burden on the applicant.

Proposed new §7.301 (current §7.40) incorporates additional components that essentially commemorate current Commission practice with respect to gas utility annual reports. Proposed new subsection (a) states a date certain, April 1, for filing annual reports, rather than the 90 days after December 31 in the current rule. Proposed new subsection (b) specifies that a utility must file one of three types of annual report (gathering, transmission, or distribution), and new subsection (c) provides a definition of "gas gathering utility" for the purpose of determining which annual report a utility must file. The definition for "gas gathering utility" combines the elements that are currently in §7.40(d), (e) and (f). Proposed new subsection (h) allows a utility to request an extension of time for filing its annual report.

Finally, in proposed new §7.245 (current §7.54), the Commission proposes to reflect the limitations imposed by the Texas Utilities Code on the effective date of Commission orders in municipal appeals by setting a specific time frame by which orders should become effective.

Jackie Standard, Research Specialist, Gas Services Division, has determined that, for each year of the first five years that the repeals and new sections are proposed to be in effect, there will be no fiscal implications for state or local governments.

Ms. Standard has also determined that, for each year of the first five years the repeals and new sections are proposed to be in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be a clearer understanding of the Commission's rules because they will be better organized and more clearly worded.

There is no anticipated economic cost to individuals, small businesses, or micro-businesses required to comply with the proposed repeals and new sections, because the requirements have not change, only the organization of the rules.

The Commission simultaneously proposes the review of 16 TAC Chapter 7 in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting the rules continue to exist. The notice of proposed review will be filed with the *Texas Register* concurrently with this proposal.

Comments on the proposal may be submitted to Jackie Standard, Research Specialist, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or by electronic mail to jackie.standard@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9281. For more information, email Ms. Standard or call her at (512) 463-7118.

SUBCHAPTER A. PROCEDURAL RULES

16 TAC §§7.1 - 7.11

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

The repeals are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed repeals.

Issued in Austin, Texas on April 22, 2002.

§7.1. Definitions.

§7.2. Filing of Documents.

§7.3. Communication by Gas Utilities with Members or Employees of the Railroad Commission.

§7.4. Procedure for Abandonment or Discontinuance of Service.

§7.5. Content of Statements of Intent and Petitions for Review of Municipal Action.

§7.6. Increasing Residential and Commercial Rates--Statement of Intent.

§7.7. Procedure To Increase Residential and Commercial Rates in Unincorporated Areas.

§7.8. Deadline for the Filing of Prepared Testimony and Exhibits by a Utility Seeking Appellate Review of Municipal Action and Statements of Intent To Increase a City Gate Rate.

§7.9. Contents of Notice.

§7.10. Publication and Service of Notice.

§7.11. Statement of Intent To Participate.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202475

Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER B. SUBSTANTIVE RULES

16 TAC §§7.40 - 7.43, 7.46, 7.48, 7.50 - 7.52, 7.54 - 7.59

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

The repeals are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed repeals.

Issued in Austin, Texas on April 22, 2002.

§7.40. Annual Report.
§7.41. Curtailment Program for Natural Gas Transported and within the State.
§7.42. Gas Utility Tax.
§7.43. System of Accounts.
§7.46. Gas Distribution in Mobile Home Parks, Apartment Houses, and Apartment Units.
§7.48. Construction Work in Progress and Allowance for Funds Houses, and Apartment Units.
§7.50. Certain Matters To Be Submitted in Rate Hearings.
§7.51. Depreciation and Allocations.
§7.52. Lost and Unaccounted for Gas.
§7.54. Effective Date of Orders; Interest on Deferred Funds.
§7.55. Gas Cost Recovery.
§7.56. Advertising, Contributions, and Donations.
§7.57. Allowable Rate Case Expenses.
§7.58. Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities.
§7.59. Natural Gas Transportation Standards and Code of Conduct.

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

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Mary Ross McDonald
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CHAPTER 7. GAS SERVICES DIVISION
SUBCHAPTER A. GENERAL RULES

16 TAC §7.110, §7.115

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.110. Communication by Gas Utilities with Members or Employees of the Railroad Commission.

(a) The Commission shall maintain accurate logs of all personal contacts and telephone communications between gas utilities or their representatives and members of the Commission or employees of the Gas Services Division or Office of General Counsel. This log shall be available to the public for inspection during regular office hours. This log shall contain:

(1) the date of the communication;

(2) whether the communication was by telephone or personal contact;

(3) the name and address of the person initiating the contact and the gas utility represented, if applicable;

(4) the subject matter of the communication; and

(5) a statement of any action requested by a gas utility or its representative.

(b) The Commission shall maintain copies of all written correspondence between members of the Commission or employees of the Gas Services Division or Office of General Counsel and gas utilities or their representatives. These copies shall be available to the public for inspection during regular office hours.

(c) The form for recording personal contacts and telephone communications is adopted for the purpose of this section.
Figure: 16 TAC §7.110(c)

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

(1) Affiliate--Any affiliate as defined in Texas Utilities Code, §101.003.

(2) Allowance for funds used during construction (AFC)--The net cost of borrowed funds for the period of construction used for construction purposes and a reasonable rate on other funds when so used until included in the rate base.

(3) Apartment house--A building or buildings containing more than five dwelling units, all of which are rented or available to be rented primarily for nontransient use, with rental paid at intervals of one week or longer. The term "apartment house" shall include residential condominiums, whether rented or owner occupied.

(4) Apartment unit--A room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

(5) Bulletin--A Gas Services Division publication published twice monthly containing information about the Division such as notices of hearings, final orders and decisions, rules, and other information of general interest to the public. The Division shall publish the bulletin on the Commission's web site and shall make a paper copy available for public inspection and copying.

(6) Commission--The Railroad Commission of Texas, including its staff or delegate.

(7) Common purchaser of gas--Every common purchaser of gas as defined in Texas Natural Resources Code, §111.081(a)(2).

(8) Construction work in progress (CWIP)--Funds expended by a gas utility which are irrevocably committed to construction projects not yet completed or placed into service.

(9) Cost of service adjustment clause--Any rate provision other than a purchased gas adjustment clause provided for in §7.5519 of this title (relating to Gas Cost Recovery), which operates to increase or decrease rates without prior consent or authority of the appropriate regulatory authority.

(10) Director--The Director of the Gas Services Division or the Director's delegate.

(11) Discrimination--Any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly-situated shippers.

(12) Domestic use--The use of natural gas for cooking, clothes drying, space heating, or water heating.

(13) Environs rates--Residential and commercial rates for a gas utility applicable to natural gas sales and service in unincorporated areas adjacent to or near incorporated cities and towns.

(14) Gas-gathering utility--For the purposes of determining which annual report to file, a gas utility or public utility which employs a pipeline or pipelines and ancillary facilities thereto in the first taking or the first retaining of possession of gas produced by others which extends from any point where such gas is produced, purchased, or received to the trunk line or main line of transportation where such gas is sold or delivered, without regard to the size, the length, or the amount of such gas carried through such pipeline or pipelines to the trunk line or main line of transportation, thus having as its primary function the collecting or collecting and processing of gas produced by others as a preliminary incident to the transportation after it has been severed from the earth by production.

(15) Gas pipeline--Any gas pipeline under the provisions of Texas Utilities Code, Chapters 121 and 122.

(16) Gas Services Division or Division--The administrative subdivision of the Commission responsible for the regulation of the natural gas utility industry in Texas.

(17) Gas utility (utility)--Any gas utility or utility as defined in Texas Utilities Code, Title 3.

(18) Local distribution company--An entity that operates a retail gas distribution system.

(19) Lost and unaccounted for gas--The difference between the amount of gas metered into a distribution or transmission system and the amount metered out.

(20) Lost gas--The amount of gas which physically escapes into the ground or atmosphere from a distribution or transmission system, except for that gas which escapes as a part of an intentional testing procedure or purging operation performed during maintenance or construction activities.

(21) Master meter--A single large volume gas measurement device by which gas is metered and sold to a single purchaser who distributes the gas to one or more additional persons downstream from that meter.

(22) Mobile home--A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(23) Mobile home or apartment resident--An occupant of a mobile home in a mobile home park or an occupant in an apartment house or apartment unit who is responsible for the payment rentals and receives gas through a submeter.

(24) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of the state.

(25) Person--Has the same meaning as the definition in Texas Utilities Code, §101.003(10).

(26) Preference--Any material difference in rates, service, rules and regulations, conditions of service, or the dissemination or providing of information concerning transportation services which unreasonably advantages or favors similarly-situated shippers.

(27) Qualifying offer--An offer to convert all of the residential or commercial customers' gas burning facilities to the lowest cost available alternative energy source, including, at a minimum, a single tank of normal size for the customer's premises filled once with any liquid alternative energy source. At the customer's election, the qualifying offer shall be the cash equivalent of the cost of conversion to the lowest cost available alternative energy source.

(28) Shipper--Any person or corporation for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(29) Similarly-situated shipper--Any shipper that seeks or receives transportation services under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

(A) service requirements;

(B) location of facilities;

(C) receipt and delivery points;

(D) length of haul;

(E) quality of service (firm, interruptible, etc.);

(F) quantity;

(G) swing requirements;

(H) credit worthiness;

(I) gas quality;

(J) pressure (including inlet or line pressure);

(K) duration of service;

(L) connect requirements; and

(M) conditions and circumstances existing at the time of agreement or negotiation.

(30) Special rates--Residential and commercial rates for a gas utility applicable to natural gas sales and service established pursuant to Commission orders applicable only to service by a given utility within a specified area and not specifically keyed to the rates charged in any incorporated area.

(31) Submeter--A single gas measurement device by which gas is metered to a mobile home unit, apartment house, or apartment unit downstream of a master meter.

(32) Transportation service--The receipt of a shipper's gas at a point or points on the facilities of a transporter, and redelivery of a shipper's gas by the transporter at another point or points on the facilities of the transporter, including exchange, backhaul, displacement, and other methods of transportation, provided, however, that the term "transportation service" shall not include processing services or the movement of gas to which the transporter has title.

(33) Transporter--Any common purchaser of gas, gas utility, or gas pipeline that provides gas gathering and/or transmission transportation service for a fee.

(34) Unaccounted for gas--Lost and unaccounted for gas less lost gas.

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

Filed with the Office of the Secretary of State on April 22, 2002.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission
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For further information, please call: (512) 463-6684

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SUBCHAPTER B. SPECIAL PROCEDURAL RULES

16 TAC §§7.201, 7.205, 7.210, 7.220, 7.225, 7.230, 7.235, 7.240, 7.245

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.201. Filing of Documents.

(a) A person intending to initiate a proceeding before the Commission shall file two copies of such pleadings with the Director.

(b) A person filing pleadings or documents other than those initiating a proceeding shall file two copies. At the discretion of the hearings examiner, the person may file these pleadings or documents by facsimile transmission. If a person files a copy of a signed original, the person or the person's authorized representative shall maintain the signed original for examination by the Commission, the examiner, the Director, or any party to the proceedings.

(c) The mailing address of the Gas Services Division and the Office of General Counsel is: Railroad Commission of Texas, P.O. Box 12967, 1701 North Congress Avenue, Austin, Texas 78711-2967. The regular office hours of the Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays and on certain state-observed holidays.

§7.205. Contents of Statements of Intent and Petitions for Review of Municipal Action.

(a) Contents. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), and any necessary additional information required by the Commission to evaluate the filing, all statements of intent to increase rates and petitions for review of action by municipality shall contain the following:

(1) the proposed revisions of rates and schedules;

(2) a statement specifying in detail each proposed change;

(3) the effect the proposed change is expected to have on the revenues of the applicant; and

(4) the classes and numbers of utility customers affected.

(b) Petitions for review. Any utility filing a petition for review appealing the decision of the governing body of a municipality to the Commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.501 of this title (relating to Certain Matters to be Submitted in Rate Hearings), and prepared testimony of all of its witnesses and exhibits with the Director on the same date it files its petition for review.

(c) Compliance. The Commission may reject any filing which does not substantially comply with the requirements of this section at the time of filing or a reasonable time therefrom. The Commission shall not consider a statement of intent or petition for review of action by a municipality to be properly filed until all items listed in subsection (a) of this section have been filed with the Director.

§7.210. Increasing Residential and Commercial Rates--Statement of Intent.

(a) Contents. In addition to the information required in §7.205 of this title (relating to Contents of Statements of Intent and Petitions for Review of Municipal Action), the following information shall be included in each statement of intent to increase residential and commercial rates within the original jurisdiction of the Commission:

(1) a statement as to whether the proposed rates will or will not exceed 115% of the average of all rates for similar services of all municipalities served by the same utility within the same county;

(2) a statement as to whether the proposed change will or will not result in a "major change," as that term is defined in Texas Utilities Code, §104.101.

(b) Requirement of additional information for cost of service increases in adjacent municipalities. If the utility proposes a rate for residential and commercial rates within the original jurisdiction of the Commission that is the same rate as the rate in effect in the nearest incorporated area in Texas served by the same utility, and the rate change in the municipality is the result of a cost of service adjustment clause as defined in §7.115(9) of this title (relating to Definitions), the gas utility shall file with the Director, in addition to the information listed in subsection (a) of this section, the following information:

(1) all calculations used to derive the cost of service adjustment;

(2) the effect of the proposed rates on each affected customer class; and

(3) a copy of the cost of service adjustment clause in effect in the adjacent municipality.

§7.220. Environs Rates.

(a) Levels of environs rates.

(1) The environs rates may be the same rates as those in effect in the nearest incorporated area in Texas served by the same utility

where gas is obtained from at least one common pipeline supplier or transmission system. The Commission, on application by a utility, on complaint by any affected person, or on its own motion may review the rate in or boundaries of a given environs area and may consent to or order an adjustment where appropriate.

(2) In addition to the definition of environs rates in §7.115(13) of this title (relating to Definitions), environs rates shall include any quality of service rules adopted by the Commission in subchapter D of this chapter (relating to Customer Service and Protection). Such quality of service rules shall apply to environs areas and become part of environs rates regardless of whether the same quality of service rules are in effect in the related incorporated areas.

(b) Rate increases for environs rates. Rate increases in environs shall be made in accordance with the following procedures.

(1) The gas utility shall file a statement of intent and shall give notice as required under Texas Utilities Code, §104.102, and §7.210 of this title (relating to Increasing Residential and Commercial Rates--Statement of Intent). In addition, when environs rates are to be increased at the same time and to the same extent as the related incorporated area (city) rate and the proposed change does not constitute a "major change," the statement of intent to increase such environs rates shall include (in completed form) the following statement: "This is a Statement of Intent to increase environs rates for the unincorporated areas in the vicinity of _____, and contains rates identical with and to become effective upon the same date as rates contained in a similar Statement of Intent filed on or about this date by this utility with said city. This Statement of Intent is intended to produce the same residential and commercial rates as finally approved for the City of _____ and applies to the rates set out herein or any lower rates finally approved for the City of _____. Any rate changes pursuant to this Statement of Intent will not become effective until identical changes have become effective within the City of _____." All rate schedules filed with the environs Statement of Intent shall bear the following statement: "Effective on the latter of _____ or such other date as new rates become effective in the City of _____."

(2) The utility shall give notice of the filing of a statement of intent to increase environs rates as required by §7.235 of this title (relating to Publication and Service of Notice).

(3) Upon request and a showing of good cause by the utility, the environs rates may become effective upon the same date as the rates became effective in the municipality pursuant to Texas Utilities Code, §104.104. Environs rates shall not become effective any earlier than the filing date of the statement of intent to increase rates with the Director. If a utility appeals the rate to the Commission, and the Commission establishes rates the same as or less than those in the environs statement of intent, the rates established by the Commission in the city may become simultaneously effective in the environs area. If the Commission dismisses that appeal, any rates which have been established in the city may become effective in the environs area at the time of dismissal, provided that the rates established in the city are the same as or less than those in the environs statement of intent.

(4) No later than 60 days from the date of filing an environs statement of intent, the utility shall furnish a copy to the Commission of any action taken by the city with respect to the related statement of intent, the form of written notice mailed to affected environs area customers, and an affidavit of publication from the newspaper in which notice by publication was made, or an affidavit stating the manner in which notice was otherwise given pursuant to Texas Utilities Code, §104.103.

(c) Rate changes proposed pursuant to cost of service adjustment clause. The Commission shall review, on a cost of service basis, an increase in an environs rate that the utility proposes pursuant to a cost of service adjustment clause, as defined in §7.115(9) of this title (relating to Definitions). The cost of service adjustment clause in effect in the adjacent municipality shall not be applicable or put into effect for the affected environs area, although the utility may request the same rates that are in effect in the adjacent municipality for the environs area. The Commission may review the proposed rate increases pursuant to these clauses on an informal basis and will not schedule a formal hearing unless a complaint is received pursuant to subsection (b)(4) of this section or the Commission elects to conduct a formal hearing.

(d) Other rate changes. This section shall not apply to major rate changes or to changes in special rates.

§7.225. City Gate Rates.

Any utility filing a statement of intent to increase a city gate rate which is subject to the original jurisdiction of the Commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.501 of this title (relating to Certain Matters to be Submitted in Rate Hearings), and prepared testimony of all of its witnesses and exhibits with the Director on the same date it files its statement of intent.

§7.230. Contents of Notice.

(a) Rate setting notice. In all proceedings involving rate setting, the gas utility's notice shall include the following information:

(1) the proposed revision of rates and schedules;

(2) a statement specifying in detail each proposed change;

(3) the effect the proposed change is expected to have on the revenues of the company;

(4) the classes and numbers of utility customers affected; and

(5) any other information required by the Commission.

(b) Environs notice. In addition to the information required in subsection (a) of this section, in all proceedings involving statements of intent to change environs rates, as that term is defined in §7.115(13) of this title (relating to Definitions), the gas utility's notice shall also include:

(1) the date of the filing of the statement of intent;

(2) a statement as to whether or not the proposed rates constitute a "major change";

(3) a statement that the proposed change in rates will not become effective until similar changes have become effective within the nearest incorporated city if the rates are sought to be at the same level as the city rates;

(4) the location where information concerning the proposed change may be obtained; and

(5) a statement that any affected person may file in writing comments or a protest concerning the proposed change in the environs rates with the Docket Services Section of the Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, at any time within 30 days following the date on which the change would or has become effective.

(c) If the gas utility gives notice by mail under the provisions of Texas Utilities Code, §104.103, such notice shall be printed in type large enough for easy reading and shall be the only information contained on the piece of paper on which it is written. A gas utility may

give the notice required under either subsection (a) or (b) of this section by mailing or otherwise delivering the notice with its billing statements.

§7.235. Publication and Service of Notice.

(a) Rate setting proceedings.

(1) Notice. In all rate proceedings, notice shall be given in the following ways.

(A) The Commission shall publish the notice of hearing in the next Gas Services Division Bulletin published after the date of issuance of the notice of hearing.

(B) The gas utility shall give notice in accordance with §1.45 of this title (relating to Notice of Hearing in Nonrulemaking Proceedings) and, when applicable, §1.48 of this title (relating to Service in Protested Contested Cases).

(C) The gas utility shall give notice in all rate proceedings as required under Texas Utilities Code, §104.103.

(D) The Office of General Counsel may also require that a gas utility mail or deliver notice to other affected persons or agencies.

(2) Commission's appellate jurisdiction. In addition to the types of notice required in paragraph (1) of this subsection, a gas utility shall also give notice in rate proceedings involving only the Commission's appellate jurisdiction by serving all parties in the original rate proceeding and the affected municipality with a copy of the petition for review on the same date the utility files the petition for review with the Commission. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Director to the intervenor within five days from the date the motion to intervene is granted.

(3) City gate rates. In addition to the types of notice required in paragraph (1) of this subsection, a gas utility shall also give notice in rate proceedings involving city gate rates by serving all directly affected customers with a copy of the statement of intent on the same date the gas utility files the statement of intent with the Commission. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Director to the intervenor within five days from the date the motion to intervene is granted.

(b) Rulemaking proceedings. In rulemaking proceedings, notice shall be given in the following ways.

(1) The Commission shall give notice in accordance with §1.42 of this title (relating to Notice of Rulemaking Proceedings).

(2) The Office of General Counsel shall mail notice to all persons who have made timely written requests of the Commission for advance notice of its rulemaking proceedings.

(3) The Commission shall publish the notice of hearing in the next Gas Services Division Bulletin published after the date of issuance of the notice of hearing.

(4) The Office of General Counsel may require the applicant to mail or deliver notice to other affected persons or agencies.

(c) Proceedings other than rate setting or rulemaking proceedings. In proceedings other than rate setting or rulemaking, notice shall be given in the following ways.

(1) The Commission shall publish the notice of hearing in the next Gas Services Division Bulletin published after the date of issuance of the notice of hearing.

(2) The Office of General Counsel may require the applicant to mail or deliver notice to other affected persons or agencies.

§7.240. Statement of Intent to Participate.

If the Office of General Counsel receives a letter or other communication from an affected person concerning a statement of intent filed pursuant to Texas Utilities Code, §104.105, the Office of General Counsel shall, within a reasonable time thereafter, forward to such affected person a form for filing a complaint and statement of intent to participate. The affected person shall complete the complaint and statement of intent to participate form and shall include the complainant's name, address, the utility and the rate increase that is the subject of the complaint, how the affected person will be impacted by the proposed rate increase, and a statement that the complainant or an authorized representative shall appear and participate through the presentation of evidence and arguments if a hearing is held to consider the rate increase. The affected person shall properly complete and return the complaint and statement of intent to participate form to the Office of General Counsel within 14 days after the mailing by the Office of General Counsel, or the Commission shall not consider it to be a properly filed complaint pursuant to Texas Utilities Code, §104.105. If the initial complaint is received before the deadline in Texas Utilities Code, §104.105, and the complaint and statement of intent to participate form is received after that date but in a timely manner pursuant to this rule, the form shall be deemed to be filed as of the date of the filing of the original complaint.

§7.245. Effective Date of Orders.

(a) The Commission may provide that an order in a rate proceeding, other than an order issued in a municipal rate appeal, be effective from some date after Commission jurisdiction has attached. When the effective date of an order is prior to the date of issuance, the Commission may permit a utility to recover or require a utility to refund an amount equal to any revenue granted in the order that differs from that actually collected for the period from the effective date of the order to the date of issuance. Interest on the revenue so collected or refunded shall be allowed at a rate equivalent to that established by statute for the courts of the state for judgments wherein the rate of interest is not established by an underlying contract, or at any reasonable rate as determined by the Commission for the specific rate proceeding. All amounts recovered by the utility under this section shall be collected by way of a surcharge to the normal customer bill.

(b) In municipal rate appeals, the Commission shall enter a final order establishing rates the Commission determines the municipality should have set in the ordinance to which the appeal applies. If the Commission fails to enter a final order within 185 days after the date the appeal is complete, the rates proposed by the gas utility are considered to be approved by the Commission and take effect on the expiration of the 185-day period.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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SUBCHAPTER C. RECORDS AND REPORTS; TARIFFS; GAS UTILITY TAX

16 TAC §§7.301, 7.305, 7.310, 7.351

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.301. Annual Report.

(a) Each gas utility, public utility, or utility under the jurisdiction of the Commission shall file with the Commission each year a gathering, transmission, or distribution annual report showing that information required by the Commission to enable it to properly regulate natural gas utilities within the state. The annual report shall be made on a form approved by the Gas Services Division, printed or otherwise made available to all gas utilities by the Division. The annual report shall be made on a calendar year basis with the reports being due not later than April 1 of each calendar year for the preceding calendar year. The annual report shall be filed with the Gas Services Division.

(b) All intrastate gas utilities shall file either a gathering, transmission or distribution annual report with the Gas Services Division of the Commission. Gas gathering utilities, as defined in subsection (c) of this section, shall file the Gathering Annual Report. The Transmission Annual Report shall be filed by those gas utilities that do not meet the definition of a gas gathering utility and are not engaged in the distribution of natural gas to residential and commercial end users. The Distribution Annual Report shall be filed by those gas utilities that are engaged in the retail distribution of gas to end users.

(c) For the purpose of determining which annual report to file, a "gas gathering utility" shall be defined as a gas utility or public utility which employs a pipeline or pipelines and ancillary facilities thereto in the first taking or the first retaining of possession of gas produced by others which extends from any point where such gas is produced, purchased, or received to the trunk line or main line of transportation where such gas is sold or delivered, without regard to the size, the length, or the amount of such gas carried through such pipeline or pipelines to the trunk line or main line of transportation, thus having as its primary function the collecting or collecting and processing of gas produced by others as a preliminary incident to the transportation after it has been severed from the earth by production.

(d) Any utility under the regulation of the Federal Energy Regulatory Commission (FERC) which alleges that it makes no intrastate sales and engages in no intrastate transportation may file a copy of its FERC Form 2 or such other annual report as may be required by that agency in lieu of the annual report form prescribed by this section. The utility shall include an affidavit that the utility makes no intrastate sales and engages in no intrastate transportation and shall provide any other information required by the Division. If, upon examination, the Gas Services Division determines that a utility filing under this section should properly have filed an annual report on the form prescribed by the Division, the Division shall notify the utility in writing and the utility shall file the appropriate report within 30 days.

(e) The definition of the "gas gathering utility" system described herein shall apply regardless of whether a gas plant is located on the pipeline or pipelines comprising a gas gathering utility system and regardless of ownership of any such gas plant.

(f) In determining whether a utility meets the definition of gas gathering utility in subsection (c) of this section, the Commission shall determine if the primary function of the pipeline or pipelines is gathering rather than relying solely on the configuration or location of the facilities comprising the system.

(g) This section is made to comply with the orders issued in Gas Utilities Docket Numbers 1, 2, 5, and 6, which orders are hereby incorporated into this section.

(h) If a gas utility is unable to meet the deadline for filing an annual report, the utility may request an extension of time to file. The utility shall make such a request in writing filed with the Division, and shall state the reason or reasons the utility cannot meet the filing dead line and the date by which the utility will file the annual report. The Division will notify the utility of the new dead line, as approved.

§7.305. Curtailment Program.

All gas utilities within the state shall file curtailment programs with the Commission. Curtailment programs shall comply with the order issued in Gas Utilities Docket Number 489, as that order is hereby incorporated into this section, or the applicable curtailment order by the Commission for a specific gas utility.

§7.310. System of Accounts.

Except as provided in this section, each gas utility, as defined in §7.115(17) of this title (relating to Definitions), shall utilize the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts for Class A and B Utilities (1976 edition or as subsequently amended) for all operating and reporting purposes. However, a utility also required to report to the Federal Energy Regulatory Commission (FERC) under that agency's system of accounts may limit the use of the NARUC accounts to any reporting or audit requirements of the Railroad Commission of Texas. Any utility operating under the FERC account system pursuant to this provision shall maintain a readily accessible cross-reference system between that system and the NARUC account system. Such accounts shall be used regardless of any conflicting classification of such utility by virtue of its annual gas-operating revenues. Further, those gas-gathering utilities, as defined in §7.115(14) of this title (relating to Definitions), shall not be required to operate under the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts for Class A and B Utilities (1976 edition or as subsequently amended), but shall be required to report under those accounts for annual report purposes pursuant to §7.301 of this title (relating to Annual Report). This uniform system of accounts shall be applicable to all gas utility and gas utility related operations regardless of location, except for those utilities permitted to file a FERC Form 2 in lieu of an annual report required by §7.301 of this title (relating to Annual Report) or those gas-gathering utilities as described in this section.

§7.351. Gas Utility Tax.

(a) Tax imposed. Every gas utility as described in Texas Utilities Code, §122.001(1), shall report and pay a gas utility tax as required by Texas Utilities Code, Chapter 122. The gas utility tax is imposed on the gross income received from all activity performed by the gas utility in Texas pursuant to Texas Utilities Code, §121.001(a)(2). The rate of the tax is one-half of 1.0% of the gross income subject to the tax.

(b) Tax payment. Each gas utility subject to this tax shall report and pay the tax imposed to the Commission by February 20, May 20, August 20, and November 20 of a year for the preceding calendar quarter. The gas utility tax report shall be of a form and content as established by the Commission and shall be properly completed. The payment shall be made payable to the Railroad Commission of Texas.

The Commission shall consider a gas utility tax report and payment timely filed if it is received by the Gas Services Division on or before the applicable date or is sent to the Division by first-class United States mail in an envelope or wrapper properly addressed and stamped and postmarked on or before the deadline and received not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(c) Gross income and gross receipts.

(1) Gross income shall be equal to the total gross receipts from any activity described in Texas Utilities Code, §122.001(2), less a deduction of the costs paid to another person for purchasing, treating, or storing natural gas or for gathering or transporting natural gas to the facilities of the gas utility. Treating shall be any process designed to make gas of pipeline quality.

(2) Gross receipts shall be equal to the total revenue received from the sale and/or transportation of gas. Revenue from residential sales, commercial and industrial sales, other sales to public authorities, sales for resale, interdepartmental sales, and revenues from transportation of gas of others (corresponding to Account Numbers 480, 481, 482, 483, 484, and 489 of the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts as they existed on January 16, 1991), as well as any other applicable revenue items determined by the Commission, shall be subject to the gas utility tax. If a gas utility that engages in both transmission and distribution of natural gas makes an allocation of costs to the transmission function which is approved by the Commission, then no additional gas utility tax shall be paid on costs allocated to the distribution function. If no such allocation is made, then such gas utility shall be required to pay gas utility tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs.

(d) Nontaxable receipts. The following revenues shall not be included in the computation of gross receipts:

(1) revenues received from first sales of gas by a producer thereof exclusively. If the sale by a producer of gas includes both produced and purchased gas, then the total revenues from the sale of produced gas shall be exempt from the gas utility tax. However, the total revenues from the sale of purchased gas shall be subject to the tax;

(2) revenues received from burnertip sales by a gas utility engaged solely in retail gas distribution;

(3) revenues derived from transporting, delivering, selling, or otherwise making available natural gas for fuel, either directly or indirectly, to irrigation wells or from the sale, transportation, or delivery of natural gas for any other direct use in agricultural activities;

(4) revenues received from interstate transactions or sales of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the provisions of the Natural Gas Act, 15 United State Code §717 et seq., and the Natural Gas Policy Act, 15 United States Code §3301 et seq.; or

(5) revenues received from brokerage or off-system sales.

(e) Deductions. To determine taxable gross income, deductions from gross receipts for certain costs incurred are allowed. Deductions may be used to reduce current tax liability to zero. Current deductions may not be carried forward and deducted from gross receipts in the next quarter. Allowable deductions shall be those costs associated with gas processed by others, natural gas wellhead purchases, natural gas field line purchases, natural gas gasoline plant outlet purchases, natural gas city gate purchases, exchange gas, purchased gas expenses, the transmission and compression of gas by others (corresponding to NARUC Account Numbers 777, 800, 801, 802, 803, 804, 806, 807, 824, and 858 as they existed on January 16, 1991), and any other applicable expenses as determined by the Commission. A deduction shall also be allowed for the cost of labor, materials used and expenses incurred in operating underground storage plant, and other underground storage operating expenses, including research and development expenses. The balances of gas withdrawn from storage (corresponding to NARUC Account Number 808 as it existed on January 16, 1991) (debit), and gas delivered to storage (corresponding to NARUC Account Number 809 as it existed on January 16, 1991) (credit) shall be netted. If the net is a debit balance, that balance shall also be deducted from the gross receipts. If the net is a credit balance, that balance shall reduce the allowable deductions.

(f) Enforcement and penalties. Each gas utility liable for the gas utility tax shall be subject to the enforcement and penalty provisions set forth in Texas Utilities Code, Chapter 122. A penalty in the amount of 5.0% of the tax due shall be imposed on any person who fails to make a report or pay a tax as required under law. An additional penalty of 5.0% of the tax due shall be imposed on any person who fails to make a report or pay a tax as required before the 30th day after the date the report or tax payment is due. If a person fails to both make the report and pay the tax for a reporting period, only the penalty and additional penalty, as applicable, for failure to make the report is imposed. If the amount of a penalty or additional penalty computed as otherwise provided by this subsection is less than $5.00, the amount of the penalty or additional penalty is $5.00. Any gas utility tax delinquent during the period commencing on or after January 1, 1994, shall draw simple interest, at the rate of 12% per year beginning on the 60th day after the date the tax becomes delinquent until the tax is paid. Any gas utility tax delinquent during the period commencing on September 1, 1991, and ending December 31, 1993, shall draw interest at the rate of 12% per year, compounded monthly, beginning on the 60th day after the date the tax became delinquent until December 31, 1993, or until the tax is paid, whichever is first. Any gas utility tax delinquent during any period before September 1, 1991, shall draw interest at the rate of 10% per year, beginning on the 60th day after the date the tax became delinquent until August 31, 1991, or until the tax is paid, whichever is first. The tax is considered paid when received by the Commission in accordance with subsection (b) of this section.

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

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Deputy General Counsel
Railroad Commission of Texas
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SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

16 TAC §§7.450, 7.455, 7.465

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.450. Gas Distribution in Mobile Home Parks, Apartment Houses, and Apartment Units.

(a) Applicability. This section shall not apply to any mobile home park, apartment house, or apartment unit within a municipality that has a municipal ordinance, charter, franchise agreement, or service rule in substantial compliance with the provisions of this section. Such ordinance, charter, franchise agreement, or service rule shall be subject to review by the Commission upon written complaint by an owner, operator, manager, or mobile home park resident, or resident of an apartment house or unit, that it does not substantially comply with the provisions of this section.

(b) Delivery of gas. An owner, operator, or manager of a mobile home park, apartment house, or apartment unit may purchase natural gas through a master meter and deliver that gas through a submeter to an individual mobile home or homes in the park or to apartment units within the apartment house for domestic use by residents or occupants for the purpose of fairly allocating the cost of each unit's gas consumption. The natural gas shall not be delivered, sold, or resold to resident or occupant at a profit. An owner, operator, or manager of a mobile home park, apartment house, or apartment unit may not allocate or charge a resident for common areas, such as laundry or recreational areas, unless the resident's or occupant's unit rate is calculated based on amount of total gas through the master meter.

(c) Charges. Any sale or resale made by such owner, operator, or manager shall be based solely on the monthly average cost of gas on a volumetric basis to the owner, operator, or manager and on the amount of usage by the mobile home park resident, or apartment house or apartment unit occupant, plus a submeter fee or surcharge for each bill rendered of not to exceed $3.00 per month. The computation of the average cost of gas shall not include any penalties charged to the owner, operator, or manager for late payment. No other charges shall be made to the mobile home resident, apartment house, or apartment unit occupant in connection with the delivery of natural gas to a submeter. The owner, operator, or manager shall prepare and deliver or send a bill to each mobile home resident, apartment house, or apartment unit occupant. The owner, operator, or manager, by contractual agreement only, may collect reasonable deposits for gas service, returned check fees, and late charges from its tenants. Any change in the initial deposit, fees, or charges shall be approved by the Commission.

(d) Recordkeeping. The owner, operator, or manager shall keep adequate records in connection with sales or resales of natural gas to mobile home residents, apartment house, or apartment unit residents. The owner, operator, or manager shall make these records available to the mobile home park, apartment house, or apartment unit during regular business hours. Such records shall include the following:

(1) the billings from the supplier of the gas to the owner, operator, or manager of the mobile home park for the current month and the 12 preceding months;

(2) the computation of the average cost of gas per month to the owner, operator, or manager for the current month and the 12 preceding months; and

(3) all submeter readings and mobile home park residents, apartment house residents, or apartment units residents billings for the current month and the 12 preceding months.

(e) Billings. The mobile home park resident's, apartment house resident's, or apartment unit resident's bill shall show all of the following information:

(1) the date of submeter reading and the reading on the resident's submeter at the beginning and at the end of the period for which the bill is rendered;

(2) the number and kind of units billed;

(3) the computer rate per unit billed;

(4) the total amount due for gas used;

(5) any surcharge, clearly identified;

(6) the name and address of the resident to whom the bill is applicable; and

(7) the date by which the resident must pay the bill.

(f) Enforcement. The records specified in this section shall be subject to inspection and audit by the Railroad Commission of Texas or its agents. Violations shall be subject to enforcement pursuant to Texas Utilities Code, Title 3.

§7.455. Curtailment Standards.

The following category shall be included as the lowest priority category on all curtailment plans of public utilities subject to the jurisdiction of the Commission: deliveries of natural gas or sales of natural gas to the interstate market under the provisions of the Natural Gas Policy Act, §311(b) and §312, and 18 Code of Federal Regulations §283.200.

(1) No sales pursuant to §311(b) shall be made unless a public utility is able to provide adequate service to all of its existing intrastate customers. Adequate service includes all requirements of existing customers, notwithstanding contractual limitations, and gas needed to fill storage reservoirs for anticipated peak usage or to build up "line pack" to fill expected customer requirements.

(2) No deliveries of natural gas which have been determined to be surplus pursuant to §312 shall be made except to the extent a public utility continues to comply with the requirements, including service to existing customers, imposed in the Commission order determining the amount of the surplus or in the contract of assignment of gas reserves from which the deliveries are being made.

(3) No sales of natural gas pursuant to 18 Code of Federal Regulations §284.200 shall be made except to the extent a public utility continues to comply with the requirements, including service to existing customers, contained in the contract under which deliveries are being made or in any report required to be filed with the Commission.

§7.465. Abandonment.

(a) Service to a local distribution company or city gate customer. A gas utility shall obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any local distribution company or city gate customer that involves the removal or abandonment of facilities other than a meter.

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service to a local distribution company or city gate customer with the Director at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of affected customers in each class;

(B) the names and addresses of the local distribution company or city gate customer affected;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the affected local distribution company or city gate customers;

(F) all reasonable alternative energy sources available to the affected local distribution company or city gate customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) any previous notice provided by the utility to the affected local distribution company or city gate customer;

(I) a statement that the application is subject to Commission approval; and

(J) a statement of the affected local distribution company or city gate customer's right to intervene in the application.

(2) The gas utility shall send a copy of the application to the affected local distribution company or the affected city gate customer on the same day that the gas utility files the application to abandon or discontinue service with the Director.

(A) If a person files a statement of intent to participate or motion to intervene with the Commission within 30 days from the date of the filing of the application, and the Commission grants party status, the Commission shall schedule a formal hearing within 60 days following the date on which the application is filed.

(B) If the Commission does not receive and grant a timely-filed statement of intent to participate or intervention pleading, then the Director shall act administratively on the application to abandon or permanently discontinue service within 45 days following the date on which the gas utility filed the application and shall notify all affected customers in writing of the decision. If the Director denies the application administratively, the gas utility, within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service, may request that a formal hearing be held within 60 days following the date on which the Director denies the application.

(3) If upon the granting of the application to abandon or permanently discontinue service the local distribution company would no longer provide service to any residential or commercial customer because of such abandonment, then the local distribution company shall file an application to abandon or permanently discontinue service under subsection (b) of this section.

(4) The Director shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection.

(5) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(6) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The Commission shall consider the following conditions when making a determination regarding an application for abandonment or permanent discontinuance of service:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

(b) Service to residential and commercial customers. A gas utility shall obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any residential or commercial customer that involves the removal or abandonment of facilities other than a meter. This subsection shall not apply to discontinuance of service to residential or commercial customers for any of the reasons set forth in subchapter D of this chapter (relating to Customer Service and Protection).

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service with the Director at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service to any residential or commercial customer involving the removal or abandonment of facilities other than a meter. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of directly affected customers in each class of service;

(B) the names and addresses of all directly affected customers;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the directly affected customers;

(F) all reasonable alternative energy sources available to the directly affected customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) the terms of any agreements with, or offers, including qualifying offers, to, directly affected customers by the gas utility for the conversion of customers' appliances to enable the use of alternative energy sources;

(I) copies of any consents to abandonment or permanent discontinuance obtained by the utility from directly affected customers;

(J) any previous notice provided by the utility to the directly affected customer;

(K) a statement that the application is subject to Commission approval; and

(L) a statement of the directly affected customer's right to protest the application and the procedure for filing such a protest.

(2) The gas utility shall send a copy of the application to all directly affected customers on the same day that the gas utility files the application to abandon or permanently discontinue service with the Director.

(A) If any of the directly affected customers files a protest within 30 days following the date on which the application is filed, the Commission shall schedule a formal hearing within 60 days following the date on which the application is filed.

(B) If all of the directly affected customers have not consented to the abandonment or permanent discontinuance of service and if the gas utility has not given all of the directly affected customers a qualifying offer, as defined in §7.115(27) of this title (relating to Definitions), but none of the directly affected customers files a protest within 30 days following the date on which the application is filed, the Director shall act administratively on the application within 45 days following the date on which the application is filed and shall notify all directly affected customers in writing of the decision. The Director may seek additional information from the directly affected customers to determine whether they have received adequate information regarding the consequences of the proposed abandonment. If the Director denies the application administratively, the gas utility, within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service, may request that a formal hearing be held within 60 days following the date on which the Director denies the application.

(C) The Director shall act administratively on the application within 30 days following the date on which the gas utility files the application if either:

(i) all of the directly affected customers consent to the abandonment or permanent discontinuance of service and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application; or

(ii) the gas utility has given all of the directly affected customers a qualifying offer, as defined in §7.115(27) of this title (relating to Definitions) and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application. If the Director denies the application administratively, the gas utility may request that a formal hearing be held within 60 days following the request for a hearing. The gas utility shall file any request for a formal hearing within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service.

(3) The Director shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection.

(4) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(5) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The Commission shall consider the following conditions when making a determination regarding an application for abandonment or permanent discontinuance of service:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202480
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-1295

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SUBCHAPTER E. RATES AND RATE-SETTING PROCEDURES

16 TAC §§7.501, 7.503, 7.5212, 7.5213, 7.5252, 7.5414, 7.5519, 7.5525, 7.5530

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.501. Certain Matters to be Submitted in Rate Hearings.

In any rate-setting hearing not expressly limited to the consideration of certain issues, the gas utility shall present, in addition to any other matters required or permitted to be presented, evidence on the following:

(1) all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise; and the extent, if any, to which the profit or loss on such merchandise is integral to the provision of natural gas and natural gas service;

(2) the amount of any income tax savings or deferrals derived from the application of such methods as liberalized depreciation or amortization;

(3) the amount of any investment tax credit taken since 1971 on the property in question in the proceeding, stated according to the year in which it was taken; the original cost and depreciable life of any property on which any investment tax credit was taken, stated

according to the year of acquisition; and whether the utility has made an election pursuant to 26 United States Code §46(e)(1);

(4) a statement of all payments of compensation (other than salary or wages subject to withholding of federal income tax) to residents of Texas, or with respect to legal or administrative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body. This statement shall include the actual expense for the test year, with any adjustments for known changes, and the actual expenses for the last odd-numbered calendar year;

(5) a statement of the total amount expended during the test year for legislative advocacy, with any adjustments for known changes, and the actual amount of any such expenses for the last odd-numbered year; and

(6) the amounts expended during the test year, with the corresponding amount for each, for business gifts, entertainment, charitable or civic contributions; institutional advertising; conservational advertising; consumption-inducing advertising; and other advertising.

§7.503. Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities.

(a) In any proceeding before the Commission involving a gas utility that keeps its books and records in accordance with Commission rules, the amounts shown on its books and records as well as summaries and excerpts therefrom shall be considered prima facie evidence of the amount of investment or expense reflected when introduced into evidence, and such amounts shall be presumed to have been reasonably and necessarily incurred; provided, however, that if any evidence is introduced that an investment or expense item has been unreasonably incurred, then the presumption as to that specific investment or expense item shall no longer exist and the gas utility shall have the burden of introducing probative evidence that the challenged item has been reasonably and necessarily incurred. The gas utility shall be given a reasonable opportunity to prepare and present such additional evidence relevant to the reasonableness or necessity of any item so challenged. This section shall apply to the books and records of an affiliate of a gas utility engaged in a transaction with the gas utility as described in the Texas Utilities Code, §102.104.

(b) Nothing in this section shall prevent the examiner or any commissioner from requiring the gas utility to provide additional information to support any specific record, fact, or argument at any time, whether or not such was put in issue at the hearing.

§7.5212. Construction Work in Progress.

(a) A utility may be permitted to include CWIP in its rate base only where necessary to the financial integrity of the utility. CWIP shall be deemed necessary to the financial integrity of a utility only where shown by clear and convincing evidence that its inclusion is necessary in order to maintain a sufficient financial liquidity so as to meet all capital obligations and to allow the utility to raise needed capital or is necessary to prevent the impairment of a utility's service. A mere averment or demonstration that exclusion of CWIP would result in an increase in the cost of funds to the utility or general assertions that the financial integrity of the utility would be impaired shall not be deemed sufficient to permit such inclusion.

(b) A utility permitted to include CWIP pursuant to this section shall utilize as a rate base amount the expenditures for such projects as are reflected on its books as of the test year. The amount shall be determined in a manner consistent with the calculation of other rate base information to reflect a uniform treatment of the test year items.

§7.5213. Allowance for Funds Used During Construction.

A utility may be permitted, subject to any revenue adjustment required, to include AFC related to a project in its rate base in rate proceedings after completion of the project. If, pursuant to this section, a utility is permitted to include CWIP related to a project in its rate base, only that AFC accruing prior to such inclusion shall be permitted.

§7.5252. Depreciation and Allocations.

(a) Book depreciation and amortization for ratemaking purposes shall be computed on a straight-line basis over the useful life expectancy of the item of property or facility in question.

(b) In any rate proceeding where items of plant, revenues, expenses, taxes, or reserves are shared by or are common to the service area in question and any other service area, these items shall be allocated to fairly and justly apportion them between the area in question and any other service area of the utility.

(c) In any rate proceeding involving a gas utility that engages in both utility and nonutility activities, all items of plant, revenues, expenses, taxes, and reserves shall be allocated to fairly and justly apportion them between the utility operations and the nonutility operations. No items of plant, revenues, expenses, taxes, or reserves allocable to nonutility operations shall be included in any figures used to arrive at any rate to be charged by a gas utility for utility service, unless clearly shown to be integral to utility operations.

§7.5414. Advertising, Contributions, and Donations.

(a) Actual expenditures for advertising shall be allowed as a cost of service for ratemaking purposes provided that the total sum of such expenditures shall not exceed one-half of 1.0% of the gross receipts of the utility for utility services rendered in the public except as provided in this section.

(b) No expenditure for the following special items shall be allowed as a cost of service for ratemaking purposes:

(1) funds spent for advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance, including funds spent to mail any such information;

(2) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations; or

(3) funds expended for contributions and donations to charitable, religious, or other nonprofit organizations or institutions.

(c) The limitations set forth in subsections (a) and (b) of this section shall not limit the following:

(1) advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas;

(2) advertising required by law or regulation, including advertising required under Part I of Title II of the National Energy Conservation Policy Act;

(3) advertising regarding service interruptions, safety measures, or emergency conditions;

(4) advertising concerning employment opportunities with such utility; or

(5) any explanation of existing or proposed rate schedules, or notifications of hearings thereon.

§7.5519. Gas Cost Recovery.

(a) Each gas utility subject to the original jurisdiction or which becomes subject to the appellate jurisdiction of the Commission may include a purchased gas adjustment clause in its rates to provide for the flow-through of part or all of its gas costs above or below the cost of gas contained in its rates, subject to proof, by a preponderance of the evidence, of certain criteria. Criteria to be used by the Commission

in determining whether or not to grant a gas utility a purchased gas adjustment clause as well as the percentage thereof shall include but not be limited to:

(1) the ability of the gas utility to control prices for gas purchased as affected by competition and relative competitive advantage;

(2) the probability of continued frequent price changes; and

(3) the availability of alternate gas supply sources.

(b) This section shall be applied prospectively only to rate cases filed and only after notice and hearing pursuant to the Texas Utilities Code, Title 3. The gas utility shall have the burden of proof regarding the necessity, if any, of a purchased gas adjustment clause and any amount of adjustment. This section shall not impair the rights of existing contract gas customers in any manner except as otherwise provided by law.

(c) The Commission shall determine in each case the necessary reporting, filing, and other procedures to be followed by a gas utility in implementing a purchased gas adjustment clause, if any, as well as other items of expense that fluctuate with gas costs which may be included in such a clause.

§7.5525. Lost and Unaccounted for Gas.

(a) All lost and unaccounted for gas shall be presumed to be lost gas unless the portion represented by unaccounted for gas, including but not limited to losses to company used gas, liquids extraction, and meter errors due to inaccurate calibration or temperature and pressure fluctuations, is proven by a preponderance of the evidence in a given ratemaking proceeding.

(b) All expenses for lost gas in excess of the maximum allowable shall be disallowed for ratemaking purposes.

(1) The maximum allowable for a distribution system is 5.0% of the amount metered in, and the maximum allowable for a transmission system is 3.0% of the amount metered in, except as provided in subsection (c) of this section.

(2) The calculation of the percentage of lost and unaccounted for gas shall be based on an annual period. Notwithstanding the choice of test year for other aspects of ratemaking, and unless a more appropriate period can be demonstrated by a preponderance of the evidence in a given ratemaking proceeding, the annual period ends June 30, and is the most recent such period for which data is available.

(c) The Commission may allow a greater percentage of lost gas than that specified in subsection (b) of this section based on special facts and circumstances including, where appropriate, the cost of effecting a reduction of the actual amount of lost gas, as may be demonstrated in a given ratemaking proceeding.

(d) Nothing in this section shall be construed to limit the Commission's authority to evaluate the reasonableness of gas expense figures, including those for unaccounted for gas, and incorporating that evaluation into its rate setting orders.

§7.5530. Allowable Rate Case Expenses.

(a) In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to:

(1) the amount of work done;

(2) the time and labor required to accomplish the work;

(3) the nature, extent, and difficulty of the work done;

(4) the originality of the work;

(5) the charges by others for work of the same or similar nature; and

(6) any other factors taken into account in setting the amount of the compensation.

(b) In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202481
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-1295

SUBCHAPTER G. CODE OF CONDUCT

16 TAC §7.7001

The new sections are proposed under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Texas Utilities Code, Titles 3 and 4, are affected by the proposed new sections.

Issued in Austin, Texas, on April 22, 2002.

§7.7001. Natural Gas Transportation Standards and Code of Conduct.

(a) Purpose. The purpose of this section is to specify standards of conduct governing the provision of gas transportation services in order to prevent discrimination prohibited by the Common Purchaser Act, Texas Natural Resources Code, §111.081, et seq.; the Texas Utilities Code, Titles 3 and 4, which if violated, as found by the Commission, may constitute evidence of unlawful discriminatory activity. Any exemptions provided in this rule do not diminish statutory prohibitions against discrimination.

(b) Code of conduct. A transporter that provides transportation services for any shipper (including affiliate shippers) shall:

(1) apply any tariff or contract provision for transportation services which provides for discretion in the application of the provision in a similar manner to similarly-situated shippers;

(2) enforce any tariff or contract provision for transportation services if there is no discretion stated in the tariff or contract in

the application of the provision in a similar manner to similarly-situated shippers;

(3) not give any shipper preference in the provision of transportation services over any other similarly-situated shippers;

(4) process requests for transportation services from any shipper in a similar manner and within a similar period of time as it does for any other similarly-situated shipper; and maintain its books of account in such a fashion that transportation services provided to an affiliate can be identified and segregated.

(c) Exemptions.

(1) The distribution and transportation activities services performed by a local distribution company are exempt from this section.

(2) In the event that an entity transports only its own gas through its own system, as designated by the transporter's current T-4 permit on file with the Commission, then that system is exempt from this section.

(d) Other requirements. Any transporter subject to the provisions of this section shall make available to the Commission its books and records of transportation service for audit purposes. With at least ten working days notice by the Commission, the transporter shall provide the Commission access to records showing rates which the transporter is charging and any other contractual conditions of transportation service. The transporter shall provide the Commission access on a reasonable basis to information contained in the transporter's records regarding any other relevant conditions of transportation 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 April 22, 2002.

TRD-200202482
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

16 TAC §26.468

The Public Utility Commission of Texas (commission) proposes new §26.468, relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting. The proposed new rule will ensure that quarterly access line reporting pursuant to §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments, and Reporting) will be performed in a uniform and timely manner. Further, it applies the commission's already-existing enforcement procedures for failure to comply with quarterly reporting requirements. Project Number 24639 has been assigned to this proceeding.

Mr. Charles Johnson, Director, Legal Division and Mr. Elango Rajagopal, Senior Policy Analyst, Telecommunications Division 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.

Mr. Johnson and Mr. Rajagopal 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 a new system that facilitates the filing of quarterly access line counts in a standardized manner. It is anticipated that the system will assist certificated telecommunications providers (CTPs) to comply with reporting requirements in a timely and efficient manner. Further, the system permits any Texas city real-time web-based access to quarterly reports of line counts filed by CTPs operating in that city. The ability to obtain line count information over the Internet is expected to reduce administrative burdens on municipal governments. 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. Johnson and Mr. Rajagopal 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.

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 20 days after publication. Reply comments may be submitted within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 24639.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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. This proposed rule is also authorized by Local Government Code §283.055 and §283.058, which requires CTPs to file a quarterly access line report and gives jurisdiction to the commission over municipalities and CTPs to enforce legal requirements in a competitively neutral and non- discriminatory manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Local Government Code §283.055 and §283.058.

§26.468. Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting.

(a) Purpose. This section standardizes access line reports and implements enforcement procedures relating to quarterly reporting.

(b) Application. The section applies to all certificated telecommunications providers (CTPs) operating in municipalities in the State of Texas.

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

(1) Certificated telecommunications provider (CTP) -- As defined under Local Government Code §283.002.

(2) Municipal Access Line Reporting System (M.A.R.S.) -- An Internet Web application designed for the reporting of quarterly access line counts.

(d) Reporting procedures. All CTPs shall electronically file the Quarterly Access Line Reports using the M.A.R.S. as required under §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments, and Reporting).

(e) Failure to comply. Failure to comply with subsection (d) of this section is subject to administrative penalties pursuant to §22.246 of this title (relating to Administrative Penalties). In applying the administrative penalties, the commission shall take into consideration factors which include, but are not limited to:

(1) failure to report;

(2) inaccurate reporting;

(3) impact of inaccurate or delayed reporting on municipalities;

(4) history of previous violations; and

(5) the number of days the report was filed late.

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202438
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 936-7308

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Texas Alcoholic Beverage Commission proposes amendments to §33.23 concerning the annual surcharges for all holders of permits and licenses issued by the commission as required by the Texas Alcoholic Beverage Code, §5.50(b), effective September 1, 1993. The section is amended by changing surcharges for all licenses and permits.

Jeannene Fox, Director of License and Compliance, has determined, based upon an estimation of the number of licenses and permits the commission will issue within the fiscal year, that for state government the estimated revenue for each of the first five years is $9,352,326, with estimated additional cost being insignificant. There will be no fiscal implications for units of local government.

Jeannene Fox has determined the public benefit cost is that for each year of the first five years the regulated alcoholic beverage industry will bear the entire amount of the cost, including indirect administrative costs, of regulation by the Texas Alcoholic Beverage Commission. The effect on small businesses cannot be determined but is considered to be minimal and would not anticipate having a disproportionate impact on those in the alcoholic beverage industry. The anticipated economic cost to persons required to comply is the applicable surcharge.

Comments on the proposal may be submitted to Jeannene Fox, Director of License and Compliance, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

The amendments are proposed under the Alcoholic Beverage Code, Subchapter B, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code and §5.50(b) which specifically mandates the surcharges and the General Appropriations Act, 75th Legislature, Article V, Alcoholic Beverage Commission.

Cross reference to statute: Alcoholic Beverage Code, §11.32, §11.35 and §61.35.

§33.23. Alcoholic Beverage License and Permit Surcharges.

(a) A surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against all license and permit holders as follows:
Figure 1: 16 TAC §33.23(a)

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code, §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

(d) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.

(e) This section shall take effect September 1, 2002 [~~October 1, 1997~~].

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

Filed with the Office of the Secretary of State on April 16, 2002.

TRD-200202349

Rolando Garza
Administrator
Texas Alcoholic Beverage Commission
Proposed date of adoption: September 1, 2002
For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.1 - 213.26, 213.30 - 213.33

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

The Board of Nurse Examiners for the State of Texas proposes the repeal 22 TAC §§213.1- 213.26 and 213.30 - 213.33. These rules concern the Practice and Procedure of the Board of Nurse Examiners and are being proposed concomitant with new §§213.1- 213.26 and 213.30 - 213.33. This proposed repeal is being done pursuant to the Board's rule review published in the April 5, 2002, *Texas Register* (27 TexReg 2845).

The Board of Nurse Examiners reviewed the rules governing practice and procedure and determined that some of the sections of the existing rule warranted clarification, simplification, updating, and changes to address certain provisions which were found to be inadequate in application. The review required implementation of wording that more accurately reflected the current statutory provisions, and complied with amendments to existing laws and new statutes and rules which have been enacted since chapter 213's last adoption. As a result, the Board of Nurse Examiners has determined that the repeal of the current sections are warranted.

The proposed repeal of §§213.1- 213.26 and 213.30 - 213.33 is made subject to §2001.039 of the Texas Government Code requiring rule review within four (4) years of the date of a rule's adoption. This repeal is intended to comply with the requisite review of Rule 213.

Katherine Thomas, executive director, has determined that for the first five-year period the sections are repealed there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Katherine Thomas, executive director, has determined that for each year of the first five years the sections are repealed, the public benefit will be that registered nurses will have a better understanding of the necessary procedural requirements because of the updated new proposed sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repealed sections.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, PO Box 430, Austin, Texas 78767-0430.

The repeals are proposed under the Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties.

No other statutes, articles, or codes will be affected by these repealed sections.

§213.1. Definitions.
§213.2. Construction and Application.
§213.3. Pleading.
§213.4. Representation.
§213.5. Appearance.
§213.6. Agreements in Writing.
§213.7. Final Disposition.
§213.8. Filing of Documents.
§213.9. Computation of Time.
§213.10. Notice and Service.
§213.11. Non-SOAH--Motion for Continuance.
§213.12. Witness Fees and Expenses.
§213.13. Complaint Investigation and Disposition.
§213.14. Preliminary Notice to Respondent in Disciplinary Matters.
§213.15. Commencement of Disciplinary Proceedings.
§213.16. Respondent's Answer in a Disciplinary Matter.
§213.17. Discovery.
§213.18. Depositions.
§213.19. Subpoenas.
§213.20. Informal Proceedings.
§213.21. Agreed Disposition.
§213.22. Formal Proceedings.
§213.23. Decision of the Board.
§213.24. Rescission of Probation.
§213.25. Monitoring.
§213.26. Reissuance of a License.
§213.30. Declaratory Order of Eligibility for Licensure.
§213.31. Cross Reference of Rights and Options Available to Licensees and Petitioners.
§213.32. Schedule of Fines .
§213.33. Penalty/Sanction Factors

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202454
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 305-6823

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22 TAC §§213.1- 213.26, 213.30 - 213.33

The Board of Nurse Examiners for the State of Texas proposes the adoption of a new 22 TAC §§213.1- 213.26 and 213.30 - 213.33. These rules concern the Practice and Procedure of the Board of Nurse Examiners and are being proposed concomitant with the repeal of the current §§213.1- 213.26 and 213.30 - 213.33. This proposed adoption is being done pursuant to the Board's rule review published in the April 5, 2002, *Texas Register* (27 TexReg 2845).

The Board of Nurse Examiners reviewed the rules governing practice and procedure and determined that some of the

sections of the existing rule warranted clarification, simplification, updating, and changes to address certain provisions which were found to be inadequate in application. The review of these sections required implementation of wording that more accurately reflected the current statutory provisions, and complied with amendments to existing laws and new statutes and rules which have been enacted since chapter 213's last adoption. The Board updated the current sections with applicable Administrative Procedure Act (APA) statutes, the newly adopted State Office of Administrative Hearings (SOAH) rules, and the Texas Rules of Civil Procedure. The language was also broadened to include the multistate language in chapter 304 of the Texas Occupations Code (Nurse Licensure Compact). Additionally, the enabling statutes, other state agencies, the Administrative Law Handbook, and other state nursing board rules were reviewed for applicability and wording. The proposed rules will specifically affect the provisions governing default proceedings, §§213.14(d)-(g), 213.16(c)-(f); motions to set aside default judgments, §213.22(i)(1); probation §213.24(c)-(e); the informal conference, §213.20(d); and the effect of a deferred adjudication, §§213.1(12), 213.30(f). As a result, the Board of Nurse Examiners has determined that the proposed adoption of the current sections are warranted.

The proposed adoption of §§213.1- 213.26 and 213.30 - 213.33 is made subject to §2001.039 of the Texas Government Code requiring rule review within four (4) years of the date of a rule's adoption. This proposed adoption is intended to comply with the requisite review of Rule 213.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed sections are adopted there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Katherine Thomas, executive director, has determined that for each year of the first five years the proposed sections are adopted, the public benefit will be that registered nurses will have a better understanding of the necessary procedural requirements because of the updated new proposed sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repealed sections.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, PO Box 430, Austin, Texas 78767- 0430.

The proposed adoption of these sections is done pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties.

No other statutes, articles, or codes will be affected by these proposed sections.

§213.1. Definitions.

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

(1) Act--The Nursing Practice Act or NPA, Tex. Occ. Code Ann. §§301.001- 301.607; 303.001-304.014.

(2) Address of record--The address of each licensee as provided to the Board of Nurse Examiners (as required by Board rules relating to Change of Name and/or Address) and currently found in 22 Tex. Admin. Code §217.7.

(3) Administrative Law Judge or judge--An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings to preside over administrative hearings pursuant to Tex. Gov't Code Ann, chapter 2003, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Tex. Gov't Code Ann. §2003.043.

(4) Adverse licensure action--Any action to fine, reprimand, warn, limit, probate, revoke, suspend, or otherwise discipline a license or multistate licensure privilege. The term includes an order accepting a voluntary surrender in lieu of disciplinary action.

(5) Answer--A responsive pleading.

(6) APA--Administrative Procedures Act, Texas Government Code Annotated ch. 2001.

(7) Attorney of record--A person licensed to practice law in Texas who has provided the staff with written notice of representation.

(8) Board--The Board of Nurse Examiners appointed pursuant to Tex. Occ. Code Ann. §301.051. For purposes of this section, "Board" also includes a three member standing committee designated by the Board to determine matters of eligibility for licensure and discipline of licensees.

(9) Client--See Patient.

(10) Complaint--Written accusations made by any person, or by the Board on its own initiative, alleging that a licensee's conduct may have violated the NPA.

(11) Contested case--A proceeding including, but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(12) Conviction--The result of a criminal proceeding wherein an individual, based on a plea or verdict, is adjudged guilty of the offense charged, or has been placed on probation with or without an adjudication of guilt, or has received an order of deferred adjudication.

(13) Declaratory order--An order, issued by the Board pursuant to Tex. Occ. Code Ann. §301.257, determining the eligibility of an individual for initial licensure as a registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(14) Default proceeding--The issuance of a proposal for decision or an order in which the factual allegations against the respondent in a contested case are deemed admitted as true upon the respondent's failure to appear at a properly noticed hearing, or failure to file a response to the Notice of Complaint.

(15) Eligibility and Disciplinary Committee--A three member committee organized in accordance with 22 Tex. Admin. Code §211.6 and authorized by the Board to make a final disposition of licensure eligibility and disciplinary matters including temporary suspension.

(16) Eligibility matter--A proceeding by which an individual requests licensure (such as by Petition for Declaratory Order, Application for Examination, Application for Endorsement), Reinstatement, Reissuance, or Renewal.

(17) Executive director--The executive director of the Board of Nurse Examiners.

(18) Formal charges--Pleading of the staff publicly alleging the reasons for disciplinary actions against a registered nurse created in accordance with Tex. Occ. Code Ann. 301.458.

(19) Hearing--A public adjudicative proceeding at the State Office of Administrative Hearings.

(20) Informal conference--A non-public settlement meeting conducted by the executive director or designee to resolve a disciplinary or eligibility matter pending before the Board.

(21) Initial licensure--The original grant of permission to practice professional nursing in Texas, regardless of the method through which licensure was sought.

(22) License--Includes the whole or part of any Board permit, certificate, approval, registration, or similar form of permission required by law to practice professional nursing in the State of Texas. For purposes of this subchapter, the term includes a multistate licensure privilege.

(23) Licensee--A person who has met all the requirements to practice as a registered nurse pursuant to the Nursing Practice Act and the Rules and Regulations relating to Professional Nurse Education, Licensure and Practice and has been issued a license to practice professional nursing in Texas. For purposes of this subchapter, the term includes a person who practices pursuant to a multistate licensure privilege.

(24) Licensing--Includes the Board's process with respect to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, amendment of a license, or multistate licensure privilege.

(25) Minor Incident--Conduct in violation of the Nursing Practice Act, which after a thorough evaluation of factors enumerated under rule 217.16 of this title (Minor Incidents), indicates that the nurse's continuing to practice professional nursing does not poses a risk of harm to a client or other person and, therefore, does not need to be reported to the Board or peer review committee.

(26) Multistate Licensure Privilege--See Tex. Occ. Code Ann. §304.001, art. 1(h)(definition of Multistate Licensure Privilege). For purposes of this subchapter, the multistate licensure privilege means the privilege to practice as a professional nurse in the state of Texas based on the current, official authority to practice as a registered nurse in another state that has enacted the Nurse Licensure Compact, Tex. Occ. Code Ann. ch. 304.

(27) Order--A written decision of the Board, regardless of form, signed by the Board or the executive director on its behalf.

(28) Party--A person who holds a license issued by the Board of Nurse Examiners or a multistate licensure privilege, a person who seeks to obtain, retain, modify his or her license, or a multistate licensure privilege, or the Board of Nurse Examiners.

(29) Patient--An individual under the care and treatment of a health care professional either at a health care facility or in his/her own home.

(30) Person--Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government.

(31) Petitioner--A party, including the staff, who brings a request or action and assumes the burden of going forward with an administrative proceeding; e.g., the staff in an action to discipline a licensee, the person who seeks reinstatement of a license, or the person who seeks a determination of eligibility for licensure.

(32) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(33) Reinstatement--The process of reissuing and restoring a license to active status that has been previously suspended, revoked, or voluntarily surrendered.

(34) Respondent--A party, including the staff, to whom a request is made or against whom an action is brought, e.g.,; the licensee in a disciplinary action by the staff, the person who holds a multistate licensure privilege in a disciplinary action by the staff, the Board in a reinstatement action, or the Board in an action to determine eligibility for licensure.

(35) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of a state agency. The term includes the amendment or repeal of a prior rule, and does not include statements regarding only the internal management or organization of any agency and not affecting private rights or procedures.

(36) SOAH--The State Office of Administrative Hearings.

(37) Staff--The staff of the Board, not including the executive director. For purposes of these rules, the staff may act through the legal counsel.

(38) Technical error--A judge's misinterpretation or misapplication of sound nursing principles or minimum nursing practice standards in a proposal for decision that must be corrected to sufficiently protect the public.

§213.2. Construction.

(a) Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) These rules apply to all contested cases within the Board's jurisdiction and shall control practice and procedure before the Board and SOAH, unless pre-empted by rules promulgated by SOAH.

(c) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed otherwise.

(d) A reference in statute revised by the Texas Occupations Code is considered to be a reference to the part of the Texas Occupations Code that revises that statute or part of statute.

(e) A reference in a rule or part of a rule revised by this subchapter is considered to be a reference to the part of this subchapter that revises that rule or part of that rule.

§213.3. Pleading.

(a) In disciplinary matters:

(1) In actions by the staff as petitioner against a licensee, the staff's pleading shall be styled "Formal Charges."

(2) Except in cases of temporary suspension and injunction, formal charges shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the APA, Texas Government Code §2001.054(c).

(b) In nondisciplinary matters:

(1) In actions by the staff as petitioner to enforce and regulate matters the staff's pleading shall ordinarily be styled "Petition of the Board of Nurse Examiners."

(2) In actions by a person as petitioner, e.g., an individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual seeking reinstatement of a surrendered, revoked or suspended license, the person's pleading shall be styled "Petition of NAME." The person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading. The Board at its discretion, may initiate proceedings before SOAH without relieving petitioner of the burden of proof as outlined herein. If the Board has provided the petitioner with written notice of the basis of its refusal or denial of license, permit, application or petition, the Board may file an answer incorporating this notice and may rely on the notice as a responsive pleading.

§213.4. Representation.

(a) A person may represent himself/herself or be represented by an attorney licensed to practice law in Texas.

(b) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and an order of the judge approving the request.

(c) Notwithstanding the above, a party may expressly waive the right to assistance of counsel.

§213.5. Appearance.

(a) Any person appearing before the Board in connection with a contested case shall prefile written testimony at least 21 days prior to the appearance.

(b) In disciplinary and eligibility matters, appearances in contested cases may be made only by a party.

(c) In disciplinary and eligibility matters, a non-party may file an amicus brief with the executive director, with contemporaneous filing at SOAH if SOAH has acquired jurisdiction. Non-parties who file under this provision must disclose:

(1) their identities including name, address, telephone number, licensure, certification status;

(2) their interest in the disciplinary or eligibility matter;

(3) the identity of their members, subscribers, clients, constituents;

(4) the identity of the persons or entities that may be benefitted by the position taken by the amicus;

(5) the identity of the persons or entities that may be injured or disadvantaged by the position taken by the amicus; and

(6) the financial impact of the position taken by the amicus.

§213.6. Agreements in Writing.

Unless otherwise provided by the NPA or these rules, no agreement between attorneys or parties concerning any action or matter pending before the Board will be enforced unless it is in writing, signed and filed with the papers as a part of the record, or unless it is made in open hearing and entered on record.

§213.7. Final Disposition.

Except for matters expressly delegated to the executive director, no agreed order regarding eligibility or discipline shall be final or effective until approved by the Board.

§213.8. Filing of Documents.

(a) The original of all applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the Board shall be filed with the executive director or designee. The date of filing is the date of actual receipt at the office of the Board.

(b) The original of all documents are to be filed at SOAH only after it acquires jurisdiction. (See §213.22(a) of this title relating to Formal Proceedings and SOAH rules, 1 TAC §155.7 relating to Jurisdiction). Filings and service to SOAH shall be directed to: Docket Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. Copies of all documents filed at SOAH must be contemporaneously served on the Board.

§213.9. Computation of Time.

(a) In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event, or default which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, an official State holiday, or another day on which SOAH or the Board office is closed, in which case the time period will be deemed to end on the next day that SOAH or the Board office is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided for by these rules, applicable law, SOAH rules, or judge order. However, if the period specified is five (5) days or less, the intervening Saturdays, Sundays, and legal holidays are not counted.

(b) Extension. When by these rules, SOAH rules, or judge order, an act is required or allowed to be done at or within a specified time, the executive director or judge (if SOAH has acquired jurisdiction) may, for cause shown, order the period enlarged if application is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified time period, the executive director or the judge may permit the act to be done after the expiration of the specified period.

§213.10. Notice and Service.

(a) Notice must be in writing and addressed to the party. Notice to a licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the licensee's address of record at the time of the mailing.

(b) Notice to a party holding a multistate licensure privilege is effective and service is complete when sent by certified or registered mail, return receipt requested, to the privilege holder's address of record maintained with the home state registered nurse licensing agency at the time of the mailing.

(c) Notice to a non-licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the person's address as stated on his/her petition, application, or other pleading.

(d) Notice to any person other than the Board is effective and service is complete when sent by certified or registered mail, return receipt requested, to the person's attorney of record.

(e) Notice of a hearing in a contested case must comply with Texas Government Code §2001.052 (Texas Administrative Procedure Act). Service is complete when made pursuant to 1 Texas Administrative Code §155.25 (SOAH).

§213.11. Non-SOAH Motion for Continuance.

(a) No continuance shall be granted except for sufficient cause supported by affidavit as detailed in subsection (b) of this section, by consent of the parties, or by operation of law. A party that files a motion for continuance fewer than 10 days before the date of the event specified

in any non SOAH notice, must contact the other party and indicate in the motion whether there is any opposition to the motion.

(b) The motion shall be supported by a sworn affidavit detailing the reasons for the continuance. The affidavit shall also set forth the specific grounds upon which the party seeks the continuance and that the continuance is not sought for delay, but so that justice may be served.

(1) If the ground of such application is the need for testimony, the party requesting the continuance shall make an affidavit stating that such testimony is material, shall show the materiality thereof, shall state that he or she has used due diligence to procure such testimony, stating such diligence, and shall state the cause of failure, if known, and shall state that such testimony cannot be procured from any other source.

(2) If it be for the absence of a witness, the party requesting the continuance shall state the name and residence of the witness, and what the party requesting the continuance expects to prove by such witness.

(3) If it be for the reason of a conflicting setting, the party requesting the continuance shall identify the conflict by style, cause number, court, agency, nature of setting and date the conflicting setting was made.

§213.12. Witness Fees and Expenses.

A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena, either the minimum as set by the legislature in the APA, Tex. Gov't Code Ann. §2001.103, or the State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts, whichever is greater.

§213.13. Complaint Investigation and Disposition.

(a) Complaints shall be submitted to the Board in writing and should contain at least the following information: RN/Respondent Name, License Number, Social Security Number, Date of Birth, Employer, Dates of Occurrence(s), Description of Facts or Conduct, Witnesses, Outcome, Complainant Identification (Name, Address, and Telephone Number), and Written Instructions For Providing Information to the Board. Complaints may be made on the agency's complaint form.

(b) A preliminary investigation shall be conducted to determine the identity of the person named or described in the complaint.

(c) Complaints shall be assigned a priority status:

(1) Priority 1 - those indicating that credible evidence exists showing a guilty plea, with or without an adjudication of guilt, or conviction of a serious crime involving moral turpitude, a violation of the NPA involving actual deception, fraud or injury to clients or the public or a high probability of immediate deception, fraud or injury to clients or the public;

(2) Priority 2 - those indicating that credible evidence exists showing a violation of the NPA involving a high probability of potential deception, fraud or injury to clients or the public;

(3) Priority 3 - those indicating that credible evidence exists showing a violation of the NPA involving a potential for deception, fraud or injury to clients or the public; and

(4) Priority 4 - all other complaints.

(d) Not later than the 30th day after a complaint is received, the staff shall place a time line for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in time line must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) staff determines insufficient evidence exists to substantiate the allegation of a violation of the NPA, Board's rules or a Board order; or

(2) staff determines sufficient evidence exists to demonstrate a violation of the NPA, Board's rules, or a Board order and drafts proposed formal charges.

(e) Staff shall conduct a criminal background search of the party described in the complaint.

(f) The staff shall provide summary data of complaints extending beyond the complaint time line to the executive director.

§213.14. Preliminary Notice to Respondent in Disciplinary Matters.

(a) Except for proceedings conducted pursuant to the authority of Tex. Occ. Code Ann. §301.455 (Temporary Suspensions) or unless it would jeopardize the investigation, prior to commencing disciplinary proceedings under §213.15 of this title, the staff shall serve the respondent with written notice in accordance with Tex. Gov't Code §2001.054(c).

(b) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse licensure action. The notice shall invite the respondent to show compliance with all requirements of the law for retention of the license.

(c) Respondent shall file a written response within 20 days after service of the notice specified in subsection (a) of this section.

(d) If the Respondent fails to file a response to the Notice of Complaint, the matter will be considered as a default case

(e) In a case of default, the Respondent will be deemed to have

(1) admitted all the factual allegations in the Notice of Complaint;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the Complaint; and

(4) waived objection to the recommended sanction in the Notice of Complaint.

(f) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the Notice of Complaint, that adopts the sanction that was recommended in the Notice of Complaint.

(g) Upon consideration of the case, the Board may:

(1) enter a default order under §2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

§213.15. Commencement of Disciplinary Proceedings.

(a) If a complaint is not resolved informally, the staff may commence disciplinary proceedings by filing formal charges.

(b) The formal charges shall contain the following information:

(1) the name of the respondent and his or her license number;

(2) a statement alleging with reasonable certainty the specific act or acts relied on by the Board to constitute a violation of a specific statute, Board rule or Board order; and

(3) a reference to the section of the Act or to the Board's rule, regulation, or order which respondent is alleged to have violated.

(c) When formal charges are filed, the executive director shall serve respondent with a copy of the formal charges. The notice shall state that respondent shall file a written answer to the formal charges that meets the requirements of §213.16 of this title (Respondent's Answer in a Disciplinary Matter).

(d) The staff may amend the formal charges at any time permitted by the APA. A copy of any formal amended charges shall be served on the respondent. The first charges filed shall be entitled "formal charges," the first amended charges filed shall be entitled "first amended formal charges," and so forth.

(e) Formal charges may be resolved by agreement of the parties at any time.

§213.16. Respondent's Answer in a Disciplinary Matter.

(a) The respondent in a disciplinary matter shall file an answer to the formal charges and to every amendment thereof.

(b) The answer shall admit or deny each of the allegations in the charges or amendment thereof. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The answer shall also include any other matter, whether of law or fact, upon which respondent intends to rely for his or her defense.

(c) If the Respondent fails to file a response to the Formal charges, the matter will be considered as a default case

(d) In a case of default, the Respondent will be deemed to have

(1) admitted all the factual allegations in the Formal charges;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the Formal charges; and

(4) waived objection to the recommended sanction in the Formal charges.

(e) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the Formal charges, that adopts the sanction that was recommended in the Formal charges.

(f) Upon consideration of the case, the Board may:

(1) enter a default order under §2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

(g) The respondent may amend his or her answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "answer," the first amended answer filed shall be entitled "first amended answer," and so forth.

§213.17. Discovery.

(a) Parties to administrative proceedings shall have reasonable opportunity and methods of discovery described in the Texas Administrative Procedure Act (APA), Chapter 2001, Texas Government Code, the Texas Nursing Practice Act (NPA), and SOAH rule, 1 Tex. Admin. Code §155.31 (Discovery). Matters subject to discovery are limited to those which are relevant and material to issues within the Board's authority as set out in the NPA. Subject to prior agreement of parties or unless explicitly stated in Board rules, responses to discovery requests, except for notices of depositions, shall be made within 20 days of receipt of the request.

(b) Parties may obtain discovery by request for disclosure, as described by Tex. R. Civ. P. 194, oral or written depositions, written interrogatories to a party, requests of a party for admission of facts and the genuineness of identity of documents and things, requests and motions for production, examination, and copying of documents and other tangible materials, motion for mental or physical examinations, and requests and motions for entry upon and examination of real property.

(c) Parties are encouraged to make stipulations of evidence where possible and to agree to methods and time lines to expedite discovery and conserve time and resources.

§213.18. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director upon the written request of any party, a copy of which shall be served on the non-requesting party.

(b) The written request shall contain the name, address, and title, if any, of the witness; a description of the books, records, writings, or other tangible items the requesting party wishes the witness to produce at the deposition; the date and location where the requesting party wishes the deposition to be taken; and a statement of the reasons why the deposition should be taken and the items produced.

(c) Depositions may be taken by telephone and by non-stenographic recording. The recording or transcript thereof may be used by any party to the same extent as a stenographic deposition, provided all other parties are supplied with a copy of the recording and the transcript to be used. The witness in a telephonic or non- stenographic deposition may be sworn by any notary. The transcript of such deposition shall be submitted to the witness for signature in accordance with Tex. Gov't Code Ann. §2001.099.

(d) Not withstanding any other provisions of these sections, the executive director may issue a commission to take a deposition prior to the filing of charges under §213.15 of this title (Commencement of Disciplinary Proceedings), if, in the opinion of the executive director, such a commission is necessary for either party to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the Act, the rules and regulations, or orders of the Board. The commission may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and to compel the production of books, records, papers or other objects.

(e) A deposition in a contested case shall be taken in the county where the witness:

(1) resides;

(2) is employed; or

(3) regularly transacts business in person.

§213.19. Subpoenas.

(a) Upon the written request of any party, the executive director may issue a subpoena to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books,

records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date on which and the location at which the items are sought to be produced. Each request, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of the subpoena, the executive director shall issue the subpoena in the form described in Texas Government Code §2001.089.

(d) Notwithstanding any other provisions of these sections, the executive director may issue a subpoena prior to the filing of formal charges under §213.15 of this title (Commencement of Disciplinary Proceedings), if, in the opinion of the executive director, such a subpoena is necessary to preserve evidence and testimony to investigate any potential violation or lack of compliance with the NPA, the rules and regulations, or orders of the Board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

§213.20. Informal Proceedings.

(a) Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, agreed order, dismissal or default.

(b) In disciplinary matters, the Board shall offer the complainant and the licensee the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on the Board's complaint form, on any notice required by statute or these rules, or otherwise.

(c) Informal proceedings may be conducted in person, by attorney, or by electronic, telephonic, or written communication.

(d) Informal proceedings shall be conducted pursuant to the following procedural standards:

(1) Respondent shall have a right to be represented by an attorney of record. At any time, should respondent choose to obtain representation by an attorney and advises staff of such choice, the conference will be discontinued;

(2) Respondent will be expected to answer questions concerning the allegations contained in notice of complaint or formal charges, but may decline to answer any questions posed during the conference;

(3) Respondent and staff participation in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. Respondent will be expected to cooperate fully with the Enforcement Staff to ensure that it has all pertinent information relating to the complaint or formal charges against respondent; and

(4) Although, a verbatim transcript is not being kept of the informal conference, party admissions and outline notes may be used at a formal hearing if this matter is docketed as a formal complaint at the State Office of Administrative Hearings.

(e) Informal conferences may be conducted at any time by the executive director or designee.

(f) The Board's counsel or assistant attorney general shall participate in informal proceedings.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the executive director may deem reasonable and necessary. Except as to matters delegated to the executive director for ratification, said agreed order shall not be final and effective until the Board, or an eligibility and disciplinary committee, votes to accept the proposed disposition.

(h) Referral to peer assistance after report to the Board.

(1) A nurse required to be reported under Tex. Occ. Code Ann. §§301.401 - .409, may obtain informal disposition through referral to a peer assistance program as specified in Tex. Occ. Code Ann. §301.410, as amended, if the nurse:

(A) makes a written stipulation of the nurse's impairment by dependency on chemicals or by mental illness;

(B) makes a written waiver of the nurse's right to administrative hearing and judicial review of:

(i) all matters contained in the stipulation of impairment;

(ii) any future modification or extension of the peer assistance contract;

(iii) the future imposition of sanctions under Tex. Occ. Code Ann. §301.453 in the event the executive director should determine the nurse has failed to comply with the requirements of the peer assistance program; and

(C) makes a written contract with the Board of Nurse Examiners through its executive director promising to:

(i) undergo and pay for such physical and mental evaluations as the executive director or the peer assistance program determine to be reasonable and necessary to evaluate the nurse's impairment; to plan, implement and monitor the nurse's rehabilitation; and, to determine if, when and under what conditions the nurse can safely return to practice;

(ii) sign a participation agreement with the peer assistance program;

(iii) comply with each and every requirement of the peer assistance program in full and timely fashion for the duration of the contract and any extension(s) thereof; and

(iv) waive confidentiality and privilege and authorize release of information about the nurse's impairment and rehabilitation to the peer assistance program and the executive director of the Board of Nurse Examiners.

(2) Disposition of a complaint by referral to a peer assistance program is not a finding which requires imposition of a sanction under Tex. Occ. Code Ann. §301.453.

(3) In the event the nurse fails to comply with the nurse's contract with the Board of Nurse Examiners or the nurse's participation agreement with the peer assistance program, such non-compliance will be considered by the executive director at an informal proceeding after notice to the nurse of the non-compliance and opportunity to respond. At the informal proceeding, the executive director may consider facts relevant to the alleged non-compliance, modify or extend the contract or participation agreement, declare the contract satisfied or impose section 301.453 sanctions on the nurse which will result in public discipline and reporting to the National Council of State Boards of Nursing's Disciplinary Data Bank.

(i) If eligibility matters are not resolved informally, the petitioner may obtain a hearing before SOAH by submitting a written request to the staff.

(j) If disciplinary matters are not resolved informally, formal charges may be filed in accordance with §213.15 of this title (Commencement of Disciplinary Proceedings) and the case may be set for a hearing before SOAH in accordance with §213.22 of this title (Formal Proceedings).

(k) Pre-docketing conferences may be conducted by the executive director prior to SOAH acquiring jurisdiction over the contested case. The executive director, unilaterally or at the request of any party, may direct the parties, their attorneys or representatives to appear before the executive director at a specified time and place for a conference prior to the hearing for the purpose of:

(1) simplifying the issues;

(2) considering the making of admissions or stipulations of fact or law;

(3) reviewing the procedure governing the hearing;

(4) limiting the number of witnesses whose testimony will be repetitious; and

(5) doing any act that may simplify the proceedings, and disposing of the matters in controversy, including settling all or part of the issues as in dispute pursuant to sections 213.20 and 213.21 of this title (Informal Proceedings and Agreed Disposition).

§213.21. Agreed Disposition.

Informal proceedings, complaints and formal charges may be resolved by stipulation, agreed settlement, agreed order, or dismissal pursuant to Tex. Occ. Code Ann. §301.463.

§213.22. Formal Proceedings.

(a) Formal administrative hearings in contested cases shall be conducted in accordance with the APA and SOAH rules. Jurisdiction over the case is acquired by SOAH when the staff or respondent files a Request to Docket Case Form accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition, application, or other document describing the agency action giving rise to a contested case.

(b) When a case has been docketed before SOAH, Board staff or respondent shall provide a notice of hearing to all parties in accordance with §2001.052, Texas Government Code, and applicable SOAH rules.

(c) In disciplinary cases, the respondent shall enter an appearance by filing a written answer or other responsive pleading with SOAH, with a copy to staff, within 20 days of the date on which the notice of hearing is served to the respondent.

(d) For purposes of this section, an entry of an appearance shall mean the filing of a written answer or other responsive pleading.

(e) The failure of the respondent to timely enter an appearance as provided in this section shall entitle the staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the judge.

(f) The notice of hearing provided to a respondent for a contested case shall include the following language in capital letters in 12-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL CHARGES WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE THE STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(g) If a respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter adverse to the respondent. Such notice shall have included in 12-point, bold faced type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and the relief sought in the proposed recommendation by the staff shall be granted by default.

(h) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice of hearing, and upon proof of proper notice to the respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §§2001.051, 2001.052, and 2001.054, as well as §213.10 of this title (Notice and Service). Such notice of hearing also shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(i) A motion to vacate a default judgment rendered by the judge must be filed within 10 days of service of notice of the default judgment.

(1) The motion to vacate the default judgment shall be granted if movant proves by the preponderance of the evidence that the failure to attend the hearing was not intentional or the result of conscious indifference, but due to accident or mistake, provided that respondent has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will occasion no delay or otherwise work an injury to the Board.

(2) If the motion to vacate the default judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the judge that heard the default matter.

(j) Because of the often voluminous nature of the records properly received into evidence by the judge, the party introducing such documentary evidence may paginate each such exhibit or flag pertinent pages in each such exhibit in order to expedite the hearing and the decision-making process.

(k) The schedule of sanctions set out in the NPA is adopted by the Board, and the judge shall use such sanctions as well as any sanctions adopted by the Board by rule.

(l) Within a reasonable time after the conclusion of the hearing, the judge shall prepare and serve on the parties a proposal for decision that includes the judge's findings of fact and conclusions of law and a proposed order recommending a sanction to be imposed, if any.

(m) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

(n) A party who appeals a final decision of the Board shall pay all of the costs of preparation of the original and any certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

(1) The record in a contested case shall consist of the following:

(A) all pleadings, motions, intermediate rulings;

(B) all evidence received or considered by the judge;

(C) a statement of the matters officially noticed;

(D) questions and offers of proof, objections, and rulings thereon;

(E) proposed findings and exceptions;

(F) any decision, opinion, or report by the judge presiding at the hearing;

(G) all staff correspondence submitted to the judge in connection with his or her consideration of the case; and

(H) the transcribed statement of facts (Q & A testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts.

(2) Calculation of costs for preparation of the record shall be governed by the same procedure utilized by the Board in preparing documents responsive to open records requests pursuant to the Public Information Act. These costs shall include, but not be limited to, the cost of research, document retrieval, copying, and labor.

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties.

(b) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(c) The proposal for decision may be acted on by the Board, or the Eligibility and Disciplinary Committee, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(d) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(e) If the Board modifies, amends, or changes the recommended order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (d) of this section.

(f) An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.

(g) A copy of the order shall be mailed to all parties and to the party's last known employer as a professional nurse.

(h) The decision of the Board is immediate, final and appealable upon the signing of the written order by the executive director on behalf of the Board where:

(1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(i) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (h) of this section.

(j) Motions for rehearing are controlled by Texas Government Code §2001.145.

§213.24. Rescission of Probation.

(a) At least 20 days prior to a hearing to rescind probation, the probationer shall be served with written notice of the allegations supporting rescission of the probation.

(b) The hearing shall be conducted in accordance with §213.22 of this title (Formal Proceedings), and the decisions of the Board shall be rendered in accordance with §213.23 of this title (Decision of the Board).

(c) After giving the probationer notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation/suspension) of the probationer's license.

(d) If during the period of probation, an additional allegation, accusation, or petition is reported or filed against the probationer's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

(e) The Board may determine as part of probation that the public may be better protected if probationer is suspended from the practice of nursing for a specific time period in order to correct deficiencies in skills, education or personal rehabilitation and to assure documented proof of rehabilitation. Prior to the lifting of the actual suspension of license, the probationer will provide documentation of completion of educational courses or treatment rehabilitation.

§213.25. Monitoring.

(a) The Board shall identify and monitor licensees who present a risk to the public and who are subject to Board orders. The monitoring system shall track at least the name, license number, address, employer, and any other information necessary to demonstrate compliance or noncompliance with an order of the Board.

(b) Monitored licensees will pay a monthly fee as stated in the Board order. Said fee shall be paid on or before the 5th of each month.

§213.26. Reissuance of a License.

(a) A person whose license to practice professional nursing in this state has been revoked, suspended, or surrendered, may apply for reinstatement of the license. In the case of revocation, petition shall not be made prior to one year after the effective date of the revocation. The Board may approve or deny a petition. In the case of denial, the Board may set a reasonable time that must elapse before another petition may be filed. The Board may impose reasonable conditions that a petitioner must satisfy before reinstatement of an unencumbered license.

(b) A petition for reinstatement shall be in writing and in the form prescribed by the Board.

(c) Petitioner's appearance at any hearing concerning reinstatement of a license shall be in person unless otherwise approved by the executive director.

(d) The burden of proof is on the petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender or suspension. A license may be reissued with a limited practice designation or with stipulations. If petition for reinstatement is denied, Petitioner may request a hearing before SOAH.

(e) In considering reinstatement of a surrendered, suspended, or revoked license, the Board will evaluate:

(1) the conduct which resulted in voluntary surrender, suspension, or revocation of the license;

(2) the conduct of the petitioner subsequent to the suspension, revocation, or acceptance of surrender of license;

(3) the lapse of time since suspension, revocation, or acceptance of surrender;

(4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and

(5) the petitioner's present qualification to practice professional nursing based on his or her history of nursing related employment or education.

§213.30. Declaratory Order of Eligibility for Licensure.

(a) A person enrolled or planning to enroll in an educational nursing program that prepares a person for an initial license as a registered nurse or an applicant who seeks licensure by endorsement pursuant §217.5 who has reason to believe that he or she may be ineligible for licensure, may petition the Board for a declaratory order or apply for a license by endorsement as to his or her eligibility.

(b) The person must submit a petition or application on forms provided by the Board which includes:

(1) a statement by the petitioner or applicant indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of evaluation, including a prognosis, by a psychologist or psychiatrist, evidence of treatment, including any medication;

(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance; and

(5) the required fee which is not refundable.

(c) An investigation of the petition/application and the petitioner's/applicant's eligibility shall be conducted.

(d) The petitioner/applicant or the Board may amend the petition/application to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If an applicant under §217.5 (Temporary License and Endorsement) has been licensed to practice professional nursing in any jurisdiction and has been disciplined, or allowed to surrender in lieu of discipline, in that jurisdiction, the following provisions shall govern the eligibility of the applicant under §213.27 (Good Professional Character).

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the applicant has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An applicant disciplined for professional misconduct in the course of nursing in any jurisdiction or an applicant who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 and is therefore ineligible to file an application under §217.5 during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the applicant has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.

(f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 (Licensure of Persons with Criminal Convictions):

(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.

(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good moral character and fitness and shall not be permitted to petition the Board for a Declaratory Order of Eligibility for Licensure for a period of three years after the completion of the sentence and/or period of probation.

(3) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good moral character and fitness.

(g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (Decision of the Board).

§213.31. Cross-reference of Rights and Options Available to Licensees and Petitioners.

Licensees subject to disciplinary action and petitioners seeking a determination of licensure eligibility have certain rights and options available to them in connection with these mechanisms. For example, licensees or petitioners have the right to request information in the Board's possession, including information favorable to licensee or petitioner, and the option to be represented by an attorney at their own expense. The following is a list of references to provisions of the Nursing Practice Act (Tex. Occ. Code Ann. ch. 301) and the Board's rules addressing these rights and options and related matters. Persons with matters before the Board should familiarize themselves with these provisions:

(1) Section 301.257 - Declaratory Order of License Eligibility;

(2) Section 301.203 - Records of Complaints;

(3) Section 301. 204 - General Rules Regarding Complaint Investigation and Disposition;

(4) Section 301.464 - Informal Proceedings;

(5) Section 301.552 - Monitoring of License Holder;

(6) Section 301.452 - Grounds for Disciplinary Action;

(7) Section 301.453 - Disciplinary Authority of Board; Methods of Discipline;

(8) Section 301.457 - Complaint and Investigation;

(9) Section 301.159 - Board Duties Regarding Complaints;

(10) Section 301.463 - Agreed Disposition;

(11) Section 301.462 - Voluntary Surrender of License;

(12) Section 301.454 - Notice and Hearing;

(13) Section 301.458 - Initiation of Formal Charges; Discovery;

(14) Section 301.459 - Formal Hearing;

(15) Section 301.460 - Access to Information;

(16) Section 301.352 - Protection for Refusal to Engage in Certain Conduct;

(17) Section 301.455 - Temporary License Suspension;

(18) Rule 217.11 - Standards of Professional Nursing Practice;

(19) Rule 217.12 - Unprofessional Conduct; and

(20) Rules 213.1 - 213.33 - Practice and Procedure.

§213.32. Schedule of Administrative fine(s).

In disciplinary matters, the Board may assess a monetary penalty or fine in the circumstances and amounts as described.

(1) The following violations may be appropriate for disposition by fine with or without educational stipulations:

(A) practice on a delinquent license for more than six months but less than two years:

(i) first occurrence: $250;

(ii) subsequent occurrence: $500;

(B) practice on a delinquent license for two to four years:

(i) first occurrence: $500;

(ii) subsequent occurrence: $1,000;

(C) practice on a delinquent license more than four years: $1,000 plus $250 for each year over four years;

(D) aiding, abetting or permitting a registered nurse to practice on a delinquent license:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(E) failure to comply with CE requirements:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(F) failure to comply with mandatory reporting requirements:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(G) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(H) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history:

(i) first occurrence: $200 - $800;

(ii) second occurrence: $500 - $1000;

(I) failure to report unauthorized practice:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(J) failure to comply with Board requirements for change of name/address:

(i) first occurrence: $100;

(ii) subsequent occurrence: $150;

(K) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:

(i) first occurrence: $100 - $1,000;

(ii) subsequent occurrence: $500 - $1,000;

(L) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(M) failure to make complete and timely compliance with the terms of any stipulation contained in a Board order:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(N) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities:

(i) first occurrence: $500;

(ii) second occurrence: $1000 - $5000; and

(O) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000.

(2) The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions listed in these rules:

(A) violations other than those listed in paragraph (1)(A)-(N) of this section:

(i) first occurrence: $100 - $1,000;

(ii) subsequent occurrence: $200 - $1,000; and

(B) a cluster of violations listed in paragraph (1)(A)-(O) of this section: $100 - $5,000.

(3) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(4) The executive director is authorized to dispose of violations listed in paragraph (1) (A)-(O) of this section, by fine, or by a combination of fine and stipulations for education, which shall be effective without ratification by the Board. The executive director shall report such cases to the Board at its regular meetings.

§213.33. Factors Considered for Imposition of Penalties/Sanctions and/or Fines.

(a) The following factors shall be considered by the executive director when determining whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine. These factors shall be used by SOAH and the Board in determining the appropriate penalty/sanction in disciplinary cases:

(1) evidence of actual or potential harm to patients, clients or the public;

(2) evidence of a lack of truthfulness or trustworthiness;

(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present fitness to practice;

(6) evidence of previous violations or prior disciplinary history by the Board or any other health care licensing agency in Texas or another jurisdiction;

(7) the length of time the licensee has practiced;

(8) the actual damages, physical, economic, or otherwise, resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances;

(12) the extent to which system dynamics in the practice setting contributed to the problem; and

(13) any other matter that justice may require.

(b) Each specific act or instance of conduct may be treated as a separate violation.

(c) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(d) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202455

Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 305-6823

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.56

(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 Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §411.56, governing memorandum of understanding (MOU) on coordinated services to children and youths of Chapter 411, Subchapter B, concerning interagency agreements.

Senate Bill 1468 (77th Legislative Session) repealed Family Code, §264.003, which required TDMHMR and seven other health and human services agencies to adopt by rule the Memorandum of Understanding for Coordinated Services to Children and Youths. In §411.56, TDMHMR adopted by reference a rule of the Texas Department of Protective and Regulatory Services (TDPRS), 40 TAC §736.701 (relating to Memorandum of Understanding for Coordinated Services to Children and Youths). The MOU remained in effect until the new MOU required by the Government Code, §531.055, (relating to Memorandum of Understanding on Services for Persons Needing Multiagency Services) was signed by the final party in early March 2002.

Cindy Brown, chief financial officer, has determined that for each year of the first five year period the proposed repeals are in effect, enforcing or administering the sections do not have foreseeable economic implications relating to cost or revenue of the state or local government because the repeals don't impose measurable costs on any person or entity.

David Rollins, acting director, Long Term Services and Supports, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is compliance with current law which repeals the statutory provision that required the old MOU be adopted by rule and replaces it with a statutory provision in the Government Code which requires a similar MOU but does not require that it be adopted by rule. It is not anticipated that the repeal will have an adverse economic effect on small business or micro-business because they do not impose any measurable costs on any person or entity. It is not

anticipated that there will be an economic cost to persons required to comply with the repealed sections. It is not anticipated that the repealed sections will affect a local economy.

Writen comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12669, Austin, Texas 78711-2668, within 30 days of publication.

The existing sections are proposed for repeal under the Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and Senate Bill 1468 (77th Legislative Session) that repealed Family Code, §264.003. The provision required TDMHMR to adopt the MOU by rule.

The repealed section affects the Family Code, §264.003.

§411.56. Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths.

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

Filed with the Office of the Secretary of State on April 18, 2002.

TRD-200202418
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 206-4516

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 1. EXECUTIVE ADMINISTRATION SUBCHAPTER G. PROCEDURES FOR SUBMITTING AND PROCESSING APPLICATIONS FOR APPROVAL OF PATENT IN LAND RELEASED BY THE STATE

31 TAC §§1.90 - 1.97

The General Land Office (GLO) proposes new Subchapter G, relating to Procedures for Submitting and Processing Applications for Approval of Patent in Land Released by the State. The new subchapter contains rules concerning the requirements and the procedures for submitting and processing applications to the General Land Office for approval by the School Land Board of a patent in land released by the state pursuant to §11.084 and §11.085 of the Texas Natural Resources Code. Sections 11.084 and 11.085 were enacted by the 77th Legislature, Regular Session, 2001, to provide the legislative authorization to settle land title disputes between the state and a private party, if the proposed constitutional amendment (Proposition #17) was approved. Proposition #17 was approved by the voters of the state in the November 2001 election and certified by the Secretary of State on November 30, 2001. The Constitutional Amendment and §11.084 and §11.085 of the Texas Natural Resources Code were effective January 1, 2002.

This proposed new subchapter contains new §§1.90 - 1.97. The proposed new sections provide orderly and efficient procedures for the GLO to determine whether a person applying for a patent releasing all or a part of the state's interest in land, excluding mineral rights, substantially meets the criteria for issuance of a patent under §11.084 of the Texas Natural Resources Code.

Section 1.90, relating to Purpose and Scope describes the purpose and scope of the proposed subchapter.

Section 1.91, relating to Definitions, defines terms used in §11.084 and §11.085 of the Texas Natural Resources to explain the scope and limitations of the words used in the statute.

Section 1.92, relating to Application Requirements, provide a detailed explanation of the requirements for applications to be deemed complete by the General Land Office. The purpose of this section is to assist applicants in avoiding rejection of incomplete applications. The proposed rule also describes the documents that must be submitted with an administratively complete application.

Section 1.93, relating to Limitation on Other Dispositions, provides applicants with a grace period during which the GLO will not seek the School Land Board's authorization to sell, convey, or otherwise dispose of land described in the application. The purpose of the rule is to preserve the status quo after a completed application has been filed claiming title to land that is currently vested in the state of Texas.

Section 1.94, relating to Processing of Applications, sets forth the standards by which the GLO reviews applications to determine whether the claimant substantially meets the criteria for issuance of a patent under §11.084 of the Texas Natural Resources Code. The section also sets forth the standards for the General Land Office's decision to submit an application to the School Land Board or to recommend that the Commissioner reject the application.

Section 1.95, relating to Patent Issuing Requirements, provides procedures for releasing all or part of the state's interest in land where the School Land Board has approved a patent. The proposed new rule explains to whom a patent may be issued. It also describes the mineral rights reservation language that will appear on patents issued under §11.084 and §11.085 of the Texas Natural Resources Code.

Section 1.96, relating to Nonapplicability, describes which state lands do not fall under §11.084 of the Texas Natural Resources Code.

Section 1.97, relating to Non-Use, states that §11.084 of the Texas Natural Resources Code may not be used to resolve boundary disputes, change the mineral reservation in an existing patent, determine the existence of a vacancy, or obtain a deed of acquittance to excess acreage.

Larry R. Soward, Chief Clerk of the General Land Office, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections for each of the first five years the sections as proposed will be in effect.

Larry R. Soward, Chief Clerk of the General Land Office, has determined that, for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections are that persons who have held state land under color of title, in the manner required under §11.084 and §11.085 of the Texas Natural Resources Code, for at least fifty years may

obtain a release of the state's interest in the land by the unanimous approval of the School Land Board. The proposed rules provide for an orderly and efficient manner to process and evaluate claims under §11.084 and §11.085 of the Texas Natural Resources Code. There will be no effect on small businesses.

Comments 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 no later than 30 days from the date of publication.

The proposed new subchapter and new rules are proposed under §11.084 and §11.085 of the Texas Natural Resources Code which provides the GLO with authorization to promulgate rules regarding land title disputes between the state and a private party.

Sections 11.084 and 11.085 of the Texas Natural Resources Code are affected by these proposed rulemaking actions.

§1.90. Purpose and Scope.

(a) These sections are intended to provide orderly and efficient procedures for the General Land Office to determine whether a person applying for patenting to release all or a part of the state's interest in land, excluding mineral rights, substantially meets the criteria for issuance of a patent under §11.084 of the Natural Resources Code.

(b) These procedures shall apply to the initiation, review, and determination of whether a person substantially meets the criteria for issuance of a patent under §11.084 of the Natural Resources Code.

§1.91. Definitions.

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

(1) Appropriate County -- The county or counties in which the tract of land claimed by the claimant is located.

(2) Board -- The School Land Board.

(3) Claimant -- A person who has filed an application with the General Land Office for a patent under §11.084 of the Natural Resources Code.

(4) Chain of Title -- Unbroken and successive written conveyances of record, or other written forms of alienation recognized under the laws of the state of Texas as sufficient to convey interests in land, affecting the tract or tracts of land claimed by the claimant, arranged consecutively, from on or before January 1, 1952, down to the present holder.

(5) Color of Title -- An unbroken chain of transfers of the claimed tract or tracts dating back at least as far as January 1, 1952

(6) Commissioner -- The Commissioner of the General Land Office.

(7) Deed -- A written instrument of conveyance, regular on its face, that conformed to the requirements of Texas Property Code or the laws of the state of Texas at the time of execution and that would have conveyed title, except for title being in the state of Texas.

(8) Documents Necessary To Support the Claim --

(A) A deed to claimant or claimant's predecessors in interest recorded in the county or counties in which the claimed tract or tracts is located,

(B) all instruments of conveyance or other forms of alienation necessary to prove chain of title,

(C) documentation the claimant deems necessary or assistive in explaining the deed or chain of title, and

(D) such other documentation as the commissioner shall deem necessary to process the application.

(9) Not Patentable Under the law in effect before January 1, 2002 -- Other than pursuant to the provisions of §11.084 and §11.085 of the Texas Natural Resources Code, claimant has no right to obtain a patent on the tract or tracts in the application.

(10) Person -- A natural person or persons or an entity or entities that are recognized by, and are in good standing with, the state of Texas at the time of the filing of the application.

(11) Unanimously Approves -- An approval of all members of the School Land Board, as opposed to approval of all members present and voting.

(12) Actual Knowledge -- The claimant or claimant's predecessors in interest possessing knowledge of a fact. Actual knowledge embraces facts which a reasonably diligent inquiry and exercise of the means of information at hand would disclose.

§1.92. Application Requirements.

(a) A person claiming title to land Under §11.084 of the Natural Resources Code may apply for a patent by filing with the commissioner:

(1) an application on the form prescribed by the commissioner;

(2) a notarized affidavit on the form prescribed by the Commissioner, which among other things, requires that the claimant swear that the claimant and, to the best of claimant's knowledge and belief, claimant's predecessors in interest, acquired the land without actual knowledge that title to the land was vested in the state of Texas; and

(3) an attachment to the application which contains documents necessary to support the claim.

(b) The attachment to the application shall include:

(1) a certified copy of the claimant's deed, or deed of claimant's predecessors in interest, recorded in the appropriate county or counties;

(2) a certified copy of the claimant's chain of title that originated on or before January 1, 1952;

(3) a copy of any boundary survey or plat of survey, in the applicant's possession, which covers any of the deeded tract;

(4) a sworn certificate from the tax assessors-collectors of the taxing jurisdictions in which the claimed tract is located stating that all taxes assessed on the claimed tract or tracts and any interest and penalties associated with any periods of tax delinquency have been paid In the event that public records concerning the tax payments on the claimed tract or tracts are unavailable for any period the tax assessors-collectors of the taxing jurisdictions in which the claimed tract is located shall provide the School Land Board with a sworn certificate stating that, to the best of their knowledge:

(A) all taxes have been paid; and

(B) there are no outstanding taxes nor interest or penalties currently due against the claimed tract or tracts; and

(5) such other documentation as the applicant deems necessary or assistive in explaining the deed or chain of title.

(c) A $25 non-refundable application fee and the appropriate filing fee for each document filed with the application shall be paid with the filing of the application.

(d) The person filing the application for consideration by the School Land Board shall be solely responsible for the completeness of the application.

§1.93. Limitation on Other Dispositions.

Filed applications shall not stay, delay or otherwise act in limitation of the authority of the Board to sell, convey or otherwise dispose of any surveyed, unsold, permanent school fund land under any other statutory authority; provided however, if a completed application is on file with the General Land Office prior to the time of the Board's final authorization of the sale, conveyance or other disposition of land covered by the application, the General Land Office will not seek the Board's authority to sell, convey or otherwise dispose of the land for a period of forty-five (45) days following the General Land Office's determination that the application is complete for consideration by the Board.

§1.94. Processing of Applications.

(a) The General Land Office shall review applications to determine whether the claimant substantially meets the criteria for issuance of a patent under §11.084 of the Natural Resources Code.

(b) Except as otherwise provided in §1.93. above, if the General Land Office determines that the application is complete for consideration by the Board, the Commissioner shall convene the Board to determine whether a patent is to be issued under §11.084 of the Natural Resources Code.

(c) Applications determined by the General Land Office to not substantially meet the criteria for issuance of a patent may be rejected by the commissioner.

(d) Applications which are not complete for consideration by the Board within six (6) months after filing with the commissioner may be rejected by the Commissioner.

(e) Rejection of an application by the General Land Office, or the Board's failure to unanimously approve the tract for patenting, terminates all rights under the application.

§1.95. Patent Issuing Requirements.

(a) If the Board unanimously approves the tract of land for patenting to release all or part of the state's interest in the land, the patent shall be issued by the General Land Office in accordance with the requirements of the statutory authority and rules and regulations of the General Land Office governing the issuance of patents generally.

(b) Patents issued pursuant to §11.084 and §11.085 of the Natural Resources Code shall be issued in the name of the holder of record title of the tract or tracts or to the first titleholder common to multiple claimants. In the event of a multiple claim to the same tract, in which there is no common titleholder, no patent shall issue.

(c) Patents issued pursuant to §11.084 and §11.085 of the Natural Resources Code shall exclude mineral rights, with the following to be stated on the patent: "PROVIDED HOWEVER, that there is reserved unto the State of Texas for the use and benefit of the Permanent School Fund and excluded from this grant, all oil, gas, coal, lignite, sulfur, and other mineral substances from which sulfur may be derived or produced, salt, potash, uranium, thorium, and all other minerals in and under the land described above wherever located and by whatever method recovered, as well as the right to lease such minerals and the right of ingress and egress to explore for and produce the same."

§1.96. Nonapplicability.

Section 11.084 of the Natural Resource Code does not apply to:

(1) beach land, submerged or filled land or islands; or

(2) land that has been determined to be state-owned by judicial decree.

§1.97. Non-Use.

Section 11.084 of the Natural Resource Code may not be used to:

(1) resolve boundary disputes;

(2) change the mineral reservation in an existing patent;

(3) determine the existence of a vacancy; or

(4) obtain a deed of acquittance to excess acreage.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202446
Larry Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 305-9129

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE
SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

31 TAC §65.173

The Texas Parks and Wildlife Department proposes an amendment to §65.173, concerning Special Provisions. The amendment would allow the department to issue a letter of authorization under specific circumstances, to named individuals, which would authorize the temporary possession of threatened and endangered species for relocation purposes. The amendment is necessary because in the course of certain activities, such as power line maintenance and roadway construction, work crews occasionally encounter threatened and endangered animals that must be relocated.

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

Mr. Macdonald has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of threatened and endangered resources.

There will be no effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative

Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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

Comments on the proposed rules may be submitted to Paul Robertson, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7044 or 1-800-792-1112 extension 7044 (e-mail: paul.robertson@tpwd.state.tx.us).

The rule is proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and under Chapter 68, which authorizes the commission to make regulations necessary to administer the provisions of the chapter and to attain its objectives, including regulations to govern limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

The proposed rule affects Parks and Wildlife Code, Chapters 67 and 68.

§65.173. Special Provisions.

(a) No person may release a threatened or endangered species except as specifically provided by the department in a letter of authorization issued prior to release.

(b) The department may issue a letter of authorization allowing the temporary possession of threatened and endangered species for relocation purposes.

(1) Letters of authorization shall be issued only to competent persons experienced in the biological sciences who are:

(A) employed by a governmental entity; or

(B) engaged in paid environmental consultancy regarding the activities for which the letter of authorization is sought.

(2) Letters of authorization shall be issued to named persons only.

(3) The activities authorized by a letter of authorization shall be performed only by the person in whose name the letter of authorization is issued.

(4) All animals possessed under a letter of authorization shall be relocated and released as quickly as possible without placing avoidable stress on the animals.

(5) All relocated animals shall be released to suitable habitat.

(6) A letter of authorization does not absolve any person from compliance with any other applicable state or federal law.

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202437

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 389-4775

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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Commission proposes amendments to §§65.315 and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation. The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, adjusts the season dates for early-season species of migratory game birds (with the exception of woodcock) to account for calendar-shift. The amendment to §65.118, concerning Open Seasons and Bag and Possession Limits - Late Season Species, adjusts the season dates for late-season species of migratory game birds, also to account for calendar-shift. The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry. The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry. The amendment to §65.321, concerning Special Management Provisions, establishes dates and special regulations for the take of light geese during the special conservation season. The amendments are necessary to implement commission policy to provide maximum hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service (Service). The Service has not issued regulatory frameworks for the 2002-2003 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative. However, the department intends to follow commission policy in adopting provisions that provide maximum hunter opportunity to the greatest number of people under the frameworks issued by the federal government.

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

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

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2003.022, as the agency has determined that the rule as proposed will not impact local economies.

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

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

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

The amendments affect Parks and Wildlife Code, Chapter 64.

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

(a) Rails.

(1) Dates: September 14-29, 2002 and October 26 - December 18, 2002[~~September 15 -30, 2001, and October 27 - December 19, 2001~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2002 [~~September 1 - October 30, 2001~~].

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

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

(2) Central Zone.

(A) Dates: September 1 - October 29, 2002 [~~September 1-October 28, 2001~~], and December 26, 2002 - January 5, 2003 [~~December 26, 2001 - January 6, 2002.~~]

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

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

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 20 - November 3, 2002, and December 21, 2002 - January 14, 2003 [~~September 21-November 4, 2001, and December 22, 2001 - January 15, 2002~~].

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

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

(4) Special white-winged dove area.

(A) Dates: September 7, 8, 14, and 15, 2002 [~~September 1, 2, 8, and 9, 2001, September 21 - November 4, 2001 and December 22, 2001- January 11, 2002~~].

(i) [~~(B)~~] Daily bag limit: 10 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than five mourning doves and two white-tipped doves per day;

(ii) [~~(C)~~] Possession limit: 20 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 10 mourning doves and four white-tipped doves in possession.

(B) Dates: September 20- November 3, 2002 and December 21, 2002- January 10, 2003.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 14-29, 2002, and October 26-December 18, 2002 [~~September 15-30, 2001, and October 27, 2001-December 19, 2001~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 14-29, 2002 [~~September 15-30, 2001~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2002 - January 31, 2003 [~~December 18, 2001-January 31, 2002~~]. The daily bag limit is three. The possession limit is six.

(h) Common snipe (Wilson's snipe or jacksnipe): October 19, 2002 - February 2, 2003 [~~October 20 2001-February 3, 2002.~~] The daily bag limit is eight. The possession limit is 16.

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

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

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one pintail, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. [~~No person may take a canvasback duck except during the period from December 27, 2001 through January 20, 2002.~~]

(A) High Plains Mallard Management Unit: October 19-21, 2002, and October 26, 2002 - January 19, 2003 [~~October 20-22, 2001 , and October 27, 2001-January 20, 2002~~].

(B) North Zone: October 26-27, 2002, and November 9, 2002 - January 19, 2003 [~~October 27-28, 2001 , and November 10, 2001-January 20, 2002~~].

(C) South Zone: October 26 - December 1, 2002, and December 14, 2002 - January 19, 2003 [~~October 27-November 25, 2001, and December 8, 2001-January 20, 2002~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: October 26, 2002 - February 9, 2003 [~~October 27, 2001-February 10, 2002~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 26, 2002 - February 9, 2003 [~~October 27, 2001-February 10, 2002~~]. The daily bag limit for dark geese is five, which may not include more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 26, 2002 - January 19, 2003 [~~October 27, 2001-January 20, 2002~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 26, 2002 - January 19, 2003 [~~October 27, 2001-January 20, 2002~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese and brant: October 26, 2002 - January 19, 2003 [~~October 27, 2001-January 20, 2002~~]. The daily bag limit is one Canada goose or one brant.

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

(A) Zone A: November 9, 2002 - February 9, 2003 [~~November 10, 2001-February 10, 2002~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 30, 2002 - February 9, 2003 [~~December 1, 2001-February 10, 2002~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 21, 2002 -January 19, 2003 [~~December 29, 2001-January 20, 2002~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 12-13, 2002 [~~October 13-14, 2001~~];

(B) North Zone: October 19-20, 2002 [~~October 20-21, 2001~~]; and

(C) South Zone: October 19-20, 2002 [~~October 20-21, 2001~~].

§65.319. Extended Falconry Season--Early Season Species

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

(1) mourning doves and white-winged doves: November 19 - December 25, 2002 [~~November 19-December 25, 2001~~].

(2) rails and gallinules: December 19, 2002 - January 24, 2003 [~~December 20, 2001-January 25, 2002~~].

(3) woodcock: November 24 - December 17, 2002 and February 1 - March 10, 2003 [~~November 24-December 17, 2001, and February 1-March 10, 2002~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

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

(1) Ducks, coots, and mergansers:

(A) [~~(1)~~] High Plains Mallard Management Unit: no extended season; and

(B) [~~(2)~~] Remainder of the state: January 20 - February 3, 2003 [~~January 21 - February 4, 2002~~].

(2) [~~(b)~~] The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means , Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 20, 2003 [~~January 21, 2002~~] through March 30, 2003 [~~March 31, 2002~~], the take of light geese is lawful in the Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 10, 2003 [~~February 11, 2002~~] through March 30, 2003 [~~March 31, 2002~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202436
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 389-4775

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SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325 - 65.331

The Texas Parks and Wildlife Department proposes amendments to §§65.325-65.327 and 65.329-65.331, and new §65.328, concerning Commercial Nongame Permits. The amendment to §65.325, concerning Applicability, eliminates language concerning the applicability of the regulations to certain species and is necessary because those species are being removed from the list of protected species. The amendment to §65.326, concerning Definitions, adds a definition of 'export.' The amendment is necessary to define an activity for enforcement purposes. The amendment to §65.327, concerning Permit Required, changes the name of the commercial collection permit to 'commercial nongame permit,' stipulates that commercial nongame permit holders may purchase nongame wildlife only from persons holding dealer's nongame permit, and prohibits non-residents from engaging in commercial activities unless they possess a non-resident commercial dealer permit issued in their name . The amendment is necessary to make the name of the former commercial collection permit more accurately reflect the nature of the permitted activities, since many permit holders currently do not engage in collection activities; to create a mechanism for the agency to capture data that otherwise would be unavailable because of other aspects of this rulemaking that eliminate the reporting requirements for holders of the former commercial collection permit; and to prevent persons from engaging in commercial activities under a non-resident commercial dealer permit while posing as an employee of an out-of-state permit holder. New §65.328, concerning Means and Methods, establishes the lawful manners and devices that may be employed to take nongame wildlife. The new section is necessary to prevent the take of nontarget species, to prevent waste, and to ensure that persons engaged in the take of nongame wildlife under certain circumstance can be identified when not personally present. The amendment to §65.329, concerning Permit Application, makes nonsubstantive changes to reflect the name changes to the types of permits, and is necessary to maintain consistent regulatory terminology. The amendment to §65.330, concerning Record and Reporting Requirements, eliminates the required annual report for holders of a commercial nongame permit, requires a separate permit to be purchased for each permanent place of business, with exceptions, sets the period of validity of a permit, and requires nongame dealers to record, maintain, and report the permit number of nongame permittees from whom they purchase or obtain nongame wildlife. The amendment is necessary to eliminate unnecessary paperwork for general nongame permit holders, as the department has determined that the data collected from them can be captured from reports submitted by nongame dealer permit holders. The amendment to §65.331, concerning Affected Species, removes species from the list of species to which the rules apply. The amendment is necessary because the department has collected enough data on certain species to assume that commercial trade in them currently poses little or no danger to their well-being in the wild.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be negligible fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the discharge of the agency's statutory duty under Parks and Wildlife Code, Chapter 67, to develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed.

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

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

Comments on the proposed rules may be submitted to John Herron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4771 or 1-800-792-1112 extension 4771 (e-mail: john.herron@tpwd.state.tx.us).

The amendments and new section are proposed under Parks and Wildlife Code, Chapter 67, which provides the commission with authority to establish any limits on the take, possession,

propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife.

The proposed rules affect Parks and Wildlife Code, Chapter 67.

§65.325. Applicability.

(a) Except as provided in §65.330 of this title (relating to Record and Reporting Requirements) and subsection (b) of this section, this subchapter applies only to the nongame wildlife listed in §65.331 of this title (relating to Affected Species), living or dead, including parts of nongame wildlife and captive-bred nongame wildlife.

(b) This subchapter does not apply to:

(1) [dead mountain lions, bobcats, or coyotes;]

[(2)] fish;

(2) [(3)] the purchase, possession, or sale of processed products, except as provided in §65.327(d) of this title (relating to Permit Required);

(3) [(4)] teachers at accredited primary or secondary educational institutions, provided that the nongame wildlife is possessed solely for educational purposes and is not sold or transferred to another person for the purpose of sale;

(4) [(5)] persons or establishments selling nongame wildlife for and ready for immediate consumption in individual portion servings, and which are subject to limited sales or use tax; [or]

(5) [(6)] any person [persons] 16 years of age or younger, provided the person is not engaged in a commercial activity involving nongame wildlife; or

(6) [(7)] aquatic products possessed under a valid bait dealer's license[; or]

[(8) albinos of any species of nongame].

§65.326. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by the Parks and Wildlife Code or regulatory definitions adopted under the authority of Parks and Wildlife Code.

(1) Captive-bred--Any wildlife born in captivity from parents held in captivity.

(2) Commercial activity--The sale, offer for sale, exchange, or barter of nongame wildlife.

(3) Export--The transport of nongame wildlife from Texas across a state or international boundary.

(4) [(3)] Possession--actual care, custody, or control of nongame wildlife.

(5) [(4)] Resale--Any transaction or activity in which a person purchases nongame wildlife or otherwise acquires nongame wildlife for a consideration and subsequently transfers or delivers the same nongame wildlife to any person in exchange for compensation or remuneration of any kind.

(6) [(5)] Processed product--

(A) nongame wildlife or parts of nongame wildlife that have been treated or prepared, by means other than refrigeration or freezing, to prevent decomposition; or

(B) parts of nongame wildlife that do not require treatment or preparation to prevent decomposition.

§65.327. Permit Required.

(a) Except as provided in this section or in §65.325 of this title (relating to Applicability), no person [in this state] may, for the purpose of commercial activity, take, attempt to take, possess, import, export, or cause the export of nongame wildlife [possess nongame wildlife for commercial purposes,] or possess more than [ten specimens of a single subspecies of nongame wildlife or more than] 25 specimens of nongame wildlife [in the aggregate,] unless that person possesses a valid commercial nongame [collection] permit or a valid dealer's nongame [dealer]permit issued by the department.

(b) A person possessing a valid commercial nongame permit may sell nongame wildlife only to a person in possession of a valid dealer's nongame permit.

(c) A person possessing a valid dealer's nongame permit may sell nongame wildlife to anyone.

(d) No person may collect nongame wildlife and subsequently treat it to create a processed product for sale, offer for sale, exchange, or barter unless that person possesses a valid dealer's nongame permit.

(e) [(b)] No person in this state may resell nongame wildlife unless that person possesses a valid dealer's nongame [dealer] permit issued by the department.

(f) A nongame dealer may, through commercial activity, acquire nongame wildlife only from a person permitted under this subchapter or a lawful out of state source.

[(c) No person may sell nongame wildlife unless that person possesses a valid commercial nongame collection permit.]

[(d) No person may for the purpose of sale, transport or ship nongame wildlife out of this state, or cause such transport or shipment, unless that person possesses an applicable, valid nongame permit issued by the department.]

(g)[(e)] Except as provided by subsection (h) [(f)] of this section, a permit required by this subchapter shall be possessed on the person of the permittee during any activity governed by this subchapter. A separate permit is required for each permanent place of business. An [; however, an] employee of [the holder of] a nongame dealer [dealer's permit] may engage in commercial activity or the resale of nongame wildlife only at a permanent place of business operated by the permittee, provided that:

(1) the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter; and

(2) the place of business has been identified on the application required by §65.329 of this title (relating to Permit Application).

(h)[(f)] In the event that [the holder of] a nongame dealer [dealer's permit] conducts a commercial activity [activities] at a place in addition to the permittee's [a] permanent place of business, that person shall possess on their person the original or a legible photocopy of a valid nongame dealer's permit [during all such activities].

(i)[(g)] This subchapter does not relieve any person of the obligation to possess an appropriate hunting license for any activity involving the take of nongame wildlife.

(j) A permit issued under this subchapter is valid through the August 31 immediately following the date of issuance.

§65.328. Means and Methods.

(a) No person shall take or attempt to take nongame wildlife by means of any vacuum-powered device.

(b) Any device employed or emplaced to take or attempt to take nongame wildlife and that is unattended shall be marked with a gear tag. The gear tag must bear the name and address of the person using the device and the date the device was set out. The information on the gear tag must be legible. The gear tag is valid for 30 days following the date indicated on the tag.

(c) Any device used to take turtles shall be set such that:

(1) the opening or entrance to the device remains above water at all times; and

(2) the holding area of trap provides a sufficient area above water to prevent trapped turtles from drowning.

§65.329. Permit Application.

(a) An applicant for a dealer's nongame permit under this subchapter shall submit to the department a completed application on a form supplied by the department, accompanied by the nonrefundable fee specified in Chapter 53 of this title (relating to Finance).

(b) The department reserves the right to refuse permit issuance to any person finally convicted of any violation of Parks and Wildlife Code during the five-year period immediately prior to an application for a permit under this subchapter. This paragraph does not apply to convictions under Parks and Wildlife Code, Chapter 31.

(c) The department shall not issue a permit to any person who has not complied with the applicable requirements of §65.330 of this title (relating to Reporting Requirements).

(d) Permits shall be issued to named individuals only, resident or nonresident as applicable, and shall not be issued in the name of any firm, organization, or institution.

§65.330. Record and Reporting Requirements.

(a) A person possessing a commercial nongame [~~collection~~] permit issued under this subchapter shall, during the period of validity of the permit:

(1) continuously maintain and possess upon their person during any permitted activity [~~collection activities~~] a daily [~~collection~~] log indicating the date, location, and number of specimens of each species collected and/or possessed [~~during the period of validity of the permit, which shall be presented upon the request of a department employee acting within the official scope of their duties~~]; and

(2) maintain a current daily record of all sales, to include the permit number of all nongame dealers purchasing nongame wildlife from the permittee [~~complete and submit to the department a annual report accompanied by the permittee's collection log, by the 15th of September of each year~~].

(b) A person possessing a nongame dealer permit shall:

(1) maintain a current daily record of all purchases and sales [~~, which shall be presented upon request to department employee acting within the official scope of their duties~~];

(2) maintain a collection log, invoice, or receipt identifying the source or origin of each specimen of nongame wildlife in possession (to include the nongame permit number of all persons from whom nongame specimens are purchased or acquired) [~~, which shall be presented upon request to an employee of the department acting within the official scope of their duties~~]; and

(3) complete and submit to the department, on a form supplied or approved by the department, an annual report for the period of August 1 through the following July 31. The report is due no later than August 15 of each year. [~~complete and submit to the department an annual report by the 15th of September of each year.~~]

(c) All records required by this section shall be retained and kept available for inspection upon request of a department employee acting within the official scope of duty for a period of one year following the period of validity of the permit under which they are required to be kept.

§65.331. Affected Species.

The following species are subject to the provisions of this subchapter.
Figure: 31 TAC §65.331

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202435
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 363, Financial Assistance Programs. The board proposes to amend §§363.601-363.604, repeal §363.613, and adopt new §§363.1001-363.1017, concerning the Storage Acquisition and State Participation Programs. The amendments remove references to the State Participation Program from Subchapter F which will be renamed to the Storage Acquisition Program. New §§363.1001-363.1017 will comprise new Subchapter J, State Participation Program. The new sections incorporate statutory and constitutional authority recently enacted. Additionally the new sections create a priority ranking system in order to be prepared for the circumstance of multiple funding requests which exceed the amount of available funding.

The amendments to Subchapter F are intended to clarify those requirements relating specifically to the Storage Acquisition Program, which provides for state ownership in projects through a general revenue financial program and to remove provisions which relate specifically to the State Participation Program, which provides for state ownership in projects through a bond-financed program. The proposed amendments remove references to the State Participation Program from the subchapter title, and from §§363.601-363.604. Section 363.613, relating to Administrative Cost Recovery for State Participation Program, is proposed for repeal because it applies to the State Participation Program and is not applicable to the Storage Acquisition Program.

New §363.1001 and §363.1002 are proposed to define the purpose of new Subchapter J and necessary terms. Pursuant to the additional authority provided in the Constitution of the State of Texas, Art. 3, §49-d-9 and Texas Water Code §16.136, which allows the board to fund more than 50% of proposed projects, the board proposes new §363.1003, Board Participation, which

identifies the circumstances pursuant to which the board will provide state participation funds. Proposed §363.1003 provides that the board may fund up to the total cost of the excess capacity in a project, provided that at least 20% of the total facility capacity will serve existing need, or that the applicant is willing to finance at least 20% of the total project cost from sources other than the board's State Participation Account. The board's current definition of existing need is the capacity necessary to serve an area's estimated population for ten years after the date of the application. Ten years is also equivalent to 20% of the standard planning horizon used in the State Water Plan. Therefore, 20% is consistent with the board's current policy regarding existing need, since the board does not participate in the cost of existing needs under the current policy. Allowing applicants with projects in which at least 20% of the total facility capacity does not serve existing need to finance at least 20% from sources other than the State Participation Account provides the board with the flexibility to fund such projects while still keeping the state's monetary investment near or below 80% in any particular project. This is also consistent with the board's current policy regarding existing need since, in most cases, the cost of the capacity to serve existing need is equal to the percent of existing need in the project.

New §363.1004, Application for Assistance, is proposed to specify information required to be submitted by applicants in order to have a complete application. Proposed new §363.1005, Approval of Engineering Feasibility Report, specifies the procedures by which the executive administrator will approve engineering feasibility reports. New §363.1006, Priority Rating System, is proposed to establish a priority rating system for proposed projects. Applications for state participation will be considered by the board in March and October of each year, and must be received at least 45 days before such board meetings. The executive administrator will rate projects based on scoring criteria in §363.1007. If insufficient money is available, projects which the legislature has specified as priority projects will first be considered for funding. If funds remain, other projects will be considered based on the scoring they receive.

New §363.1007 is proposed to identify the rating factors and point structure to be used to rate projects seeking financial assistance from the State Participation Account. The rating criteria will include projects which: develop water; use innovative technologies; have previous board funding for facility planning, design, or permitting; have developed a program of water conservation; propose to use local funds for a portion of the project; and will utilize the greatest percentage of total project facility capacity. Tie scores will be broken by awarding a point to the project having the service area which has the lowest median annual household income, based upon the most current data available from the U.S. Bureau of the Census, for all of the areas to be served by the project.

Proposed new §363.1008, Determination, describes criteria to be considered for funding eligibility including the state's recovery of its investment, cost of facility exceeding current financing capability of area to be served, optimum regional development cannot reasonably be financed by local interests, public interest will be served by acquisition of the facility, and facility contemplates optimum regional development of the project. Proposed §363.1009, Master Agreement, outlines provisions for a master agreement between the board and a political subdivision. Proposed §363.1010, Construction, provides for designation of a political subdivision as the manager of a project. Proposed §363.1011, Disbursement of State Funds, provides that funds will be disbursed according to contractual agreements between the board and the political subdivision.

Proposed §363.1012, Requirements of Application, provides that the executive administrator will define the form and number of application to be submitted and may request additional information. Proposed §363.1013, Notice to Participating Political Subdivision and Others, establishes notice requirements that the board must provide to co-owners of the facility if a purchase of the board's interest in or use of the board's interest is proposed. Proposed §363.1014, Consideration by Board, outlines procedures for board consideration and notice of an application for purchase of the board's interest. Proposed §363.1015, Resolution Authorizing Transfer, provides a mechanism to prescribe terms and conditions if necessary for sale, transfer and lease of the board's interest. Proposed §363.1016, Negotiation of Contracts, provides for a transfer agreement, all provisions appropriate to the subject of the transfer agreement, and attorney general approval. Proposed §363.1017, Administrative Cost Recovery for State Participation Program, provides that the board will assess fees for the purpose of recovering administrative costs for participation in the program and establishes the method of payment. Fees are set at .77% of the amount of total participation in a project by the board. One-third is due at closing. The remainder may be paid over annual installments with approval of the development fund manager.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for 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 distinctions between requirements relating to the State Participation and Storage Acquisition Programs and establishment of a method to prioritize projects if funds are not sufficient for all projects. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Michael Wied, Attorney, Administration and Northern Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to michael.wied@twdb.state.tx.us or by fax @ (512) 463-5580.

SUBCHAPTER F. STORAGE ACQUISITION PROGRAM

31 TAC §§363.601 - 363.604

The amendments are proposed under the authority of the Texas Water Code §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15 and 16.

§363.601. Scope of Subchapter.

The sections of this subchapter shall pertain to applications for financing storage acquisition [~~and state participation~~]projects authorized by the Texas Water Code, Chapter 15, Subchapter E[~~, and Chapter 16,~~

~~Subchapters E and F~~]. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to storage acquisition [~~and state participation~~]projects.

§363.602. Definitions of Terms.

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

(1) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(2) Facility--A regional facility for which an application has been submitted requesting financial assistance from the Storage Acquisition Program [~~state participation account~~] and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

§363.603. Application for Assistance.

An applicant for the board financial assistance in a project under the Storage Acquisition Program [~~or state participation programs~~] shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete application.

§363.604. Determination.

The board may provide funding from the Storage Acquisition Program [~~state participation account~~] when the information available to the board is sufficient for the board to determine that:

(1) it is reasonable to expect that the state will recover its investment in the facility based upon a determination that the revenue to be generated by the projected number of customers served by the facility will be sufficient to purchase the excess capacity owned by the state;

(2) the estimated cost of the facility as set forth in the application exceeds the current financing capabilities of the area to be served by the facility based on a determination that the existing rates of the applicant available for payment of the facility collected from the number of connections at the end of construction and other revenues available for payment of the facility;

(3) the optimum regional development cannot be reasonably financed by local interests based on a determination that the estimated cost to construct the alternate facility and the revenue to be generated by the projected number of customers of the facility;

(4) the public interest will be served by acquisition of the facility based on a determination that the cost of the facility to the public are reduced by the state's participation in the facility; and

(5) the facility to be constructed or reconstructed contemplates the optimum regional development which is reasonably required under all existing circumstances of the site based on a determination that design capacity of the components of the facility are sufficient to meet the foreseeable needs of the area over the useful life of the facility.

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202432
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 19, 2002
For further information, please call: (512) 463-7981

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31 TAC §363.613

(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the proposed repeal Texas Water Code Chapter 15, Subchapter E, and Chapter 16, Subchapters E and F.

§363.613. Administrative Cost Recovery for State Participation 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 April 19, 2002.

TRD-200202433
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 19, 2002
For further information, please call: (512) 463-7981

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SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1001 - 363.1017

The new sections are proposed under the authority of the Texas Water Code §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the proposed new sections are Texas Water Code Chapter 15, Subchapter E, and Chapter 16, Subchapters E and F.

§363.1001. Scope of Subchapter.

The sections of this subchapter shall pertain to applications for financing state participation projects authorized by the Texas Water Code, Chapter 16, Subchapters E and F. Unless in conflict with the provisions

of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to state participation projects.

§363.1002. Definitions of Terms.

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

(1) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(2) Facility--A regional facility for which an application has been submitted requesting financial assistance from the state participation account and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

§363.1003. Board Participation.

Unless otherwise directed by legislation, the board will only use the State Participation Accounts of the Texas Water Development Fund I or the Texas Water Development Fund II to provide financial assistance for all or a part of the cost to construct the excess capacity of a proposed project where

(1) at least 20% of the total facility capacity of the proposed project will serve existing need, or

(2) the applicant will finance at least 20% of the total project cost from sources other than the State Participation Account.

§363.1004. Application for Assistance.

In addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) a resolution from its governing body which shall:

(A) request financial assistance and identify the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, §551.001, et seq,) and after providing all such notice as required by such Act;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, the commission, Texas Comptroller, Texas Secretary of State, or any other federal, state or local government or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the applicant;

(D) the applicant warrants compliance with the representations made in the application in the event that the board provides the financial assistance; and

(E) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(3) a proposed schedule for purchase of the board's interest in the project;

(4) copies of any proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(5) a citation to the specific legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the applicant as may be deemed necessary by the executive administrator;

(6) if the applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(7) documentation of the ownership interest, with supporting legal documentation, of property on which proposed project shall be located, or if the property is to be acquired, certification that the applicant has the necessary legal power and authority to acquire the property;

(8) if payment under the master agreement is based either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Prior to release of funds, an applicant shall submit executed copies of such contracts to the executive administrator;

(9) if an election is required by law to authorize participation in the project, the executive administrator may require applicant to provide the election date and election results as to each proposition necessary for the participation of the applicant as part of the application.

(10) Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide:

(A) description and purpose of the project;

(B) entities to be served and current and future population;

(C) the cost of the project;

(D) a description of the alternatives considered and reasons for selection of the project proposed;

(E) sufficient information to evaluate the engineering feasibility;

(F) a list of the census blocks within the facility service area and the percent of current population to be served residing within each census block;

(G) a copy of the board or commission approved water conservation plan, if any, or a copy of a proposed water conservation plan prepared in accordance with §363.15 of this title relating to Required Water Conservation Plan; and

(H) maps and drawings as necessary to locate and describe the project service area. The executive administrator may request additional information or data as necessary to evaluate the project.

§363.1005. Approval of Engineering Feasibility Report.

(a) The executive administrator will approve the engineering feasibility report after determining that the items listed in §363.1004(10) of this title (relating to Application for Assistance) have been completed, the appropriate environmental determinations have been completed in accordance with §363.14 of this title (relating to Environmental Assessment), the project has been determined to be cost effective, and the financial assistance recipient has agreed to incorporate all mitigating measures directed by the executive administrator.

(b) If changes occur in the project after approval of the engineering feasibility data, the executive administrator may request additional engineering and/or environmental information in order to ascertain that the financial assistance commitment and environmental determination continues to be appropriate.

§363.1006. Priority Rating System.

(a) The board will consider applications for financial assistance from the State Participation Accounts at its meetings in March and October of each year. An application may be submitted at any time. To be considered by the board, and rated by the executive administrator, the application must be received no later than 45 days before the board meeting date at which it is to be presented to the board.

(b) Prior to each board meeting at which applications may be considered, the executive administrator shall:

(1) for each application that the executive administrator has determined is complete, identify the number of points that the application is entitled to receive from the rating criteria identified in §363.1007 of this title (relating to Rating Criteria).

(2) provide to the board a list of all completed applications, the amount of funds requested and the total number of points that each application received; and

(3) identify to the board, the total amount of funds available in the State Participation Account for new applications.

(c) If there are funds in the State Participation Account to fund all or part of any of the projects for which the executive administrator has received completed applications during the preceding six months, the board will first consider any projects that the legislature has determined shall receive priority for financial assistance from the State Participation Account. If, after considering projects with legislative priority, there are funds available for other eligible projects in the State Participation Account, then the board will consider such other applications received by the executive administrator during the preceding six month period in descending numerical order based on the rating points assigned to the application according to §363.1007 of this title. The board will consider the next application on the list only if there are funds available in the account to fund all or, if acceptable to the applicant, a part of the application.

§363.1007. Rating Criteria.

(a) The factors to be used by the executive administrator to rate projects seeking financial assistance from the State Participation Account, and the points assigned to each factor, shall be as follows:

(1) water development projects will receive 2 points, and wastewater projects will receive 1 point;

(2) projects which result in the development of a new, usable supply of water through innovative technologies including, but not limited to, desalinization, demineralization, other advanced water treatment practices, wastewater reuse, floodwater harvesting, or aquifer storage and recovery will receive 2 points;

(3) projects which have received previous board funding for facility planning, design, or permitting for the project being rated will receive 1 point;

(4) Water conservation programs required under §363.1004(10)(G) of this title (relating to Application for Assistance) will be granted a maximum of 2 points for each applicant based upon the following.

(A) Applicants which have previously adopted a board approved water conservation program or who have previously submitted a water conservation program to the commission that has been deemed complete by the commission will receive 1 point.

(B) Applicants will receive 0.125 point for each of the following elements that are found in the submitted water conservation program totalling to a maximum sum of 1 rating point per applicant:

(i) codes and ordinances which require the use of water-conserving technologies;

(ii) ordinances to promote efficiency and avoid waste;

(iii) commercial and residential conservation audits for indoor and landscape water uses;

(iv) plumbing fixture replacement and retrofit programs;

(v) recycling and reuse of reclaimed wastewater and/or gray water;

(vi) demonstrated submittals of accepted annual water conservation reports to the board and/or the commission;

(vii) demonstrated historical unexplained water loss of no more than 15%;

(viii) provision to update the program in intervals no longer than once every five years.

(5) Applicants which propose to use local funds for a portion of the project will receive the number equal to the percentage of local ownership, expressed as a decimal.

(6) Applicants will receive a number equal to the percentage, expressed as a decimal, of the total facility capacity that would be necessary to serve the existing population that could use the facility at the time the application is filed.

(b) Between tie scores only, 1 point will be awarded to the project having the service area which has the lowest median annual household income, based upon the most current data available from the U.S. Bureau of the Census, for all of the areas to be served by the project.

§363.1008. Determination.

The board may provide funding from the State Participation Account when the information available to the board is sufficient for the board to determine that:

(1) it is reasonable to expect that the state will recover its investment in the facility based upon a determination that the revenue to be generated by the projected number of customers served by the facility will be sufficient to purchase the excess capacity owned by the state;

(2) the estimated cost of the facility as set forth in the application exceeds the current financing capabilities of the area to be served by the facility based on a determination that the existing rates of the applicant available for payment of the facility collected from the number of connections at the end of construction and other revenues available for payment of the facility;

(3) the optimum regional development cannot be reasonably financed by local interests based on a determination that the estimated cost to construct the alternate facility and the revenue to be generated by the projected number of customers of the facility;

(4) the public interest will be served by acquisition of the facility based on a determination that the cost of the facility to the public are reduced by the state's participation in the facility; and

(5) the facility to be constructed or reconstructed contemplates the optimum regional development which is reasonably required under all existing circumstances of the site based on a determination that design capacity of the components of the facility are sufficient to meet the foreseeable needs of the area over the useful life of the facility.

§363.1009. Master Agreement.

The board and the political subdivision shall enter into and execute a master agreement the text of which shall include, but not be limited to, the responsibilities, duties, and liabilities of each party, including the responsibility of a designated political subdivision to assure that proper procedures are observed in advertising for bids and selecting a bidder to construct the project; the board's cost of acquisition; procedures for disbursement of board funds for the project; recognition of a political subdivision's right of first refusal prior to any sale of the board's interest in the project; a non-competitive clause; a schedule for purchase of the board's interest in the project by the political subdivision; and any other provisions deemed appropriate and necessary by the board.

§363.1010. Construction.

On projects to be constructed or enlarged by a political subdivision or subdivisions, one political subdivision may be designated under an agreement with the board to act as manager for the project and perform the functions customarily performed by a manager-owner.

§363.1011. Disbursement of State Funds.

State funds expended for the acquisition and/or development of facilities in a project shall be disbursed in accordance with the provisions of the master agreement and any other contracts by the board pursuant thereto.

§363.1012. Requirements of Application.

A prospective purchaser of the board's ownership interest in a facility or of the use of such board interest other than under terms specified in the master agreement, shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete applications.

§363.1013. Notice to Participating Political Subdivision and Others.

Upon receipt of an application by a prospective purchaser of the board's ownership interest in a facility or use of the facility, the board will send notice of its receipt by regular United States mail to all co-owners of the facility, and any users of the facility or water from the facility.

§363.1014. Consideration by Board.

The application shall be scheduled on the board's agenda, and representatives of the prospective purchaser and other interested parties shall be notified of the time of the meeting.

§363.1015. Resolution Authorizing Transfer.

If the board approves the application, a transfer resolution will be adopted which shall prescribe the terms and conditions necessary for the sale, transfer, or lease, if such terms have not been specified in the master agreement between the board and political subdivision.

§363.1016. Negotiation of Contracts.

Before the board's adoption of the transfer resolution, the executive administrator shall negotiate a transfer agreement with the prospective purchaser regarding the sale, transfer, or lease of board-owned interests. The transfer agreement shall include the interest transferred, the character of the interest transferred, the formula used to compute the price to be paid for the facilities to be acquired, provisions governing lease or rental of facilities, a hold harmless clause, recognition of the right of first refusal of any of the participating political subdivisions, a clause stating the conditions under which the contract may be terminated, and other provisions appropriate to the subject of the transfer agreement including provisions setting standards for operation and maintenance of the project. The attorney general of Texas shall approve as to legality any contract authorized under this subchapter.

§363.1017. Administrative Cost Recovery for State Participation Program.

(a) General. The board will assess fees for the purpose of recovering administrative costs from all political subdivisions with which the board agrees to participate in a state participation project under this subchapter in an amount of 0.77% of the amount of the total participation in the project by the board.

(b) Payment Method. Payment of one-third of the fee is due at closing. The balance of the fee may be paid in a limited number of annual installments with the consent of the development fund manager.

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202434
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 19, 2002
For further information, please call: (512) 463-7981

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CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §§368.1, 368.2, 368.9

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§368.1, 368.2, and 368.9 concerning the Flood Mitigation Assistance Program. The amendments provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

Proposed amendments to §368.1 provide a definition for "insured structures" to specify that references to insured structures

are to those covered by the National Flood Insurance Program. The section is further amended to reorder definitions into alphabetical order. The proposed amendment to §368.2 will correct a reference to "subchapter" which should be "chapter." Section 368.9 is proposed for amendment to add priority goals specified by FEMA in its annual allocation of funds, as a priority ranking criteria and to remove a reference to the NFIP which is not necessary with the addition of a definition for "insured structures."

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

Ms. Callahan has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify and update the rule consistent with FEMA directives. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to suzanne.schwartz@twdb.state.tx.us or by fax @ (512) 463-5580.

The amendments are proposed under the authority of the Texas Water §6.101 and Chapter 15, Subchapter F, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the research and planning fund and under Texas Government Code, Chapter 742 which provides for state coordination of local applications for federal funds.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15.

§368.1. Definitions.

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

(1) Board--The Texas Water Development Board.

(2) Community--

(A) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP; or

(B) a political subdivision or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of subparagraph (A) of this paragraph.

(3) [~~(2)~~] Executive administrator--The executive administrator of the board or a designated representative.

(4) [~~(3)~~] FEMA--Federal Emergency Management Agency.

(5) [~~(4)~~] FMA--Flood Mitigation Assistance.

(6) [~~(5)~~] NFIP--National Flood Insurance Program.

~~[(6) Community--]~~

~~[(A) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP; or]~~

~~[(B) a political subdivision or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of subparagraph (A) of this paragraph.]~~

(7) Insured structures -- Property with current flood insurance coverage which has been provided under the NFIP.

§368.2. General.

In 1997, Governor Bush designated the Texas Water Development Board as the State's Point of Contact for FEMA's FMA program. This chapter [~~subchapter~~] shall govern the board's responsibilities in administering the FMA program.

§368.9. Project Grant Evaluation and Approval Process.

(a) The executive administrator will evaluate applications for project grants and forward recommendations to the board, and the board will prioritize project grants and forward them to FEMA for funding approval based on the following criteria:

(1) the extent to which the project reduces future claims to the NFIP from repetitive loss structures or substantially damaged structures;

(2) projects that benefit areas with the greatest flood risk;

(3) projects that have the highest benefit/cost ratio;

(4) projects that are likely to benefit the greatest number of insured [~~NFIP-insured~~] structures;

(5) the extent to which the project results in a long-term solution to a flooding problem and requires minimum maintenance;

(6) whether structures affected by the project are in an identified floodway and floodplain;

(7) the extent to which the applicant is providing more than the minimum cost-share of 25%;

(8) whether the project applicant, or community where the project is located, participates in the NFIP Community Rating System (CRS); and

(9) the extent to which the project has a multi-objective purpose; and

(10) the extent to which a project meets priority goals specified in an annual FEMA allocation of funds.

(b) In its approval of a project to be recommended for FEMA project grant, the board shall specify a commitment period that shall begin to run with notification of FEMA's approval of the project and during which time the applicant must enter into a contract with the board. If a contract has not been executed within the commitment period, the commitment shall expire.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202448
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: June 19, 2002
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities. The amendment incorporates recent statutory changes. House Bill 1098, 77th Legislature, 2001, amended Tax Code, §151.052, effective September 1, 2001, to allow a printer to accept a multistate exemption certificate from a purchaser if the printed materials are produced by a web offset or rotogravure printing process and the materials are delivered by the printer to a fulfillment house or the United States Postal Service for distribution to third parties located both in Texas and outside of Texas. The purchaser who gives the certificate is then responsible for reporting and paying sales or use taxes to the comptroller on those printed materials that are subject to tax. The proposed rule incorporates this change in subsections (d)(7) and (f)(4). Senate Bill 1123, 77th Legislature, 2001, amended Tax Code, Chapters 111 and 151, effective September 1, 2001, to provide certain penalties for various criminal offenses. The proposed rule addresses criminal offenses and penalties in subsections (b)(4), (h)(3), (i)(5), (j)(4), (n), and (o) and references a new rule concerning criminal offenses and penalties. Senate Bill 640, 77th Legislature, 2001, added Tax Code, §111.0625 and §111.0626, which require taxpayers who remitted $100,000 or more in sales or use tax during the preceding state fiscal year to file sales or use tax returns and payments electronically. Subsection (e)(4) of the proposed rule addresses these changes and references §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). In addition to the legislative changes, subsections (a)(3), (b)(3), and (d)(6) of the proposed amendment provide specific information regarding the sales or use tax responsibilities of direct sales organizations and their independent salespersons. This information reflects long-standing comptroller policy. Finally, various subsections of the proposed rule are amended for the purposes of clarity.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas 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 in providing taxpayers with additional information regarding their tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§111.024, 111.0625, 111.0626, 151.052, 151.7032, 151.708, 151.7102, and 151.714.

§3.286. Seller's and Purchaser's Responsibilities.

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

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer[~~is~~]:

(A) maintains, occupies, or uses,[~~maintaining, occupying, or using,~~] permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has[~~having~~] any representative, agent, salesperson, canvasser, or solicitor who operates[~~operating~~] in this state under the authority of the seller to sell, deliver, or take[~~for the purpose of selling, delivering, or taking~~] orders for any taxable items;

(C) promotes[~~promoting~~] a flea market, trade day, or other event that involves[~~involving the~~] sales of taxable items;

(D) uses[~~utilizing~~] independent salespersons in direct sales of taxable items;

(E) derives[~~deriving~~] receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows[~~allowing~~] a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts[~~conducting~~] business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that [~~operated by~~] the seller, his agent, or employee operates for the purpose of receipt of[~~receiving~~] orders for taxable items. A warehouse, storage yard, or manufacturing plant is not[~~may not be considered~~] a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders [~~are received by the seller~~] in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves[~~involving~~] the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that [~~collected by~~] dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that [~~issued by~~] the comptroller has issued . A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items[~~collected~~] by the independent salespersons who sell[~~selling~~] the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell[~~selling~~] property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers

should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

[(4) Special purpose district--A district or other local taxing jurisdiction funded by a sales tax that is governed by the County Sales and Use Tax Act, Chapter 323.]

(b) Permits required.

(1) Each[Every] seller must apply to the comptroller and obtain[for] a tax permit for each place of business.

(2) Each[Every] out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain[for] a tax permit. An out-of-state seller who[that] has been engaged in business in Texas continues to be responsible for collection of [collecting] Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not[will not be] required to hold sales tax permits to sell taxable items for direct sales organizations. Direct [It is the responsibility of the direct] sales organizations [to] hold responsibility to maintain Texas permits and [to] collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain[Obtaining] a permit.

(1) A person must complete an[An] application that [will be furnished by] the comptroller furnishes [and must be filled out completely. After the application is filled out and returned] and must return that application to the comptroller, together with [whatever] bond or other security that may be [is] required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A[, a] separate permit under the same account is [will be] issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit cannot be transferred from one owner to another. The permit[It] is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location [under the same roof], then only one permit is required[needed].

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that [However, a person who] has traveling salesmen who operate [operating] from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in the Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for [, each costing] $.07, then the seller must collect the tax on the total sum [selling price] of $.14. Tax must be reported and remitted to the comptroller as provided by the Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. [any over-collection need not be remitted by the seller.] Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the [responsible for remitting tax on] total receipts even though the seller did not collect tax [not collected] from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state [stating] that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is [will be] presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A [It is unlawful for any] seller who advertises or holds [to advertise or hold] out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales [selling] price of [the] taxable items commits a criminal offense. See §3.305 of this title[being sold].

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials are for multistate use

and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes[~~owing~~] tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate[~~operating~~] under the same taxpayer number. Reports and payments that are due [~~to be submitted on due dates occurring~~] on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must [~~will~~] be filed on forms that [~~prescribed by~~] the comptroller prescribes. The fact that the seller or purchaser does not receive the [~~form or does not receive the~~] correct forms from the comptroller [~~for the filing of the return~~] does not relieve the seller or purchaser of the responsibility to file [~~of filing~~] a return and to pay [~~paying~~] the required tax.

(4) A seller, or a purchaser who owes tax that was not collected by a seller, who remitted $100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, § 111.0625 and § 111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(f) Reporting period.

(1) Sellers, and purchasers who owe [~~owing~~] tax that was not collected by sellers, who have less than $1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31 [~~31st~~], June 30 [~~30th~~], September 30 [~~30th~~], and December 31 [~~31st~~]. The returns must [~~are to~~] be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe [~~owing~~] tax that was not collected by sellers, who have [~~having~~] less than $1,000 state tax to report during a calendar year [~~and with authorization from the comptroller's office~~] may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is [~~will be~~] conditioned upon[~~on~~] the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded $1,000 in the prior calendar year.

(C) A taxpayer who files[~~filing~~] on a yearly basis without authorization is [~~will be~~] liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than $1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than $1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so[~~as~~] long as the yearly tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts [~~will be reviewed~~] to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file [~~begin filing~~] yearly returns.

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 [~~20th~~] of the next calendar year.

(3) Sellers, and purchasers who owe [~~owing~~] tax that was not collected by sellers, who have $1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) [~~(4)~~]Each [~~Every~~] taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department [~~and Metropolitan Transit Authority/City Transit Department~~] (MTA/CTD) sales and use tax return [~~returns~~] must file the return [~~them~~] at the same time that the state sales and use tax return is [~~returns are~~] filed.

(6) [~~(5)~~] State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 [~~12~~] are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1)-(3) of this subsection [~~Subsection (f)(1)-(3) of this section~~] do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes [~~will make~~] forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does [~~will~~] not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of[~~collecting~~] the tax. The discount is equal to 0.5% of the amount of tax due. Certain sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must [~~should~~] be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable [an] estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows [following] the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.

(4) Remittances that [which] are less than a reasonable estimate as required by paragraph (3) of this subsection are not [will not be] regarded as prepayments[a prepayment]. The 1.25% discount will not be allowed. If the taxpayer owes more than $1,500 in a calendar quarter, the taxpayer is [will be] regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are [will be] subject to late filing penalty and interest.

(5) If a taxpayer does not file a [quarterly or monthly] return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of [rate of]12% annually.

(6) Permit holders are required to file sales and use tax returns[monthly, quarterly, or yearly as set out in subsection (f) of this section]. A permit holder must file a[The] sales and use tax return[returns must be filed] even if the permit holder has no sales or[there is no] tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of $50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return [made] or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See § 3.305 of this title.

(i) Resale and exemption certificates.

(1) Any person who sells [selling] taxable items in this state must collect sales and use [a] tax on [the] taxable items that are [so] sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out- of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims [claiming] an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title. [:]

[(A) if the tax evaded by the invalid certificate is less than $20, the offense is a Class C misdemeanor;]

[(B) if the tax evaded by the invalid certificate is $20 or more but less than $200, the offense is a Class B misdemeanor;]

[(C) if the tax evaded by the invalid certificate is $200 or more but less than $750, the offense is a Class A misdemeanor;]

[(D) if the tax evaded by the invalid certificate is $750 or more but less than $20,000, the offense is a felony of the third degree;]

[(E) if the tax evaded by the invalid certificate is $20,000 or more, the offense is a felony of the second degree.]

(6) Direct payment permit holders are entitled to issue [an] exemption certificates[certificate] when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue [a] maquiladora exemption certificates when they purchase[certificate when purchasing] tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed

regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice [~~is received by the seller~~] from the comptroller of the seller's duty[~~in which~~] to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows [~~showing~~] a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are [~~will be~~] subject to verification by the comptroller before any deductions are [~~will be~~] allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of the Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(k) Refusal to issue permit. The comptroller is required by the Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(l) Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is [~~hereby~~] deemed to have abandoned the permit, and the [~~permit is hereby canceled by the~~] comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain [~~Nothing herein shall prohibit any applicant from receiving~~] a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by [~~the~~] Tax Code, §111.0046.

(m) Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(n) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(o) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 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.

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER A. GENERAL RULES

34 TAC §7.1

The Comptroller of Public Accounts proposes an amendment to §7.1, concerning general statement of purpose. Section 7.1 is amended to add the board's new responsibilities to develop, implement, and administer the higher education savings plan, as reflected in the Education Code, Chapter 54, Subchapter G.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 rules will include informing the public about the new Texas higher education savings plan, conforming the rules to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by § 529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about

this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the Texas Register in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Education Code, Chapter 54, Subchapter F, §54.602 which authorizes the board to administer the higher education savings plan, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632 which requires the board to comply with §529 of the Internal Revenue Code of 1986.

The amendment implements Education Code, Chapter 54, Subchapter F and Subchapter G.

§7.1. General Statement of Purpose.

(a) Pursuant to the Education Code, Chapter 54, Subchapter F, the Prepaid Higher Education Tuition Board is responsible for developing the Prepaid Higher Education Tuition Program to increase access to higher education for Texas families. The program will provide a mechanism through which the cost of tuition and required fees may be paid in advance of enrollment in an institution of higher education or a private or independent institution of higher education. Promulgation of these rules will inform the public and provide an orderly procedure to accomplish the responsibilities provided by law.

(b) Higher Education Savings Plan.

(1) The board develops, implements, and administers the higher education savings plan under Education Code, §54.602(b) and Education Code, Chapter 54, Subchapter G.

(2) The higher education savings plan enables individuals to contribute to an account that is established for the purpose of meeting the qualified higher education expenses of a beneficiary.

(3) This subchapter and subchapter K of this chapter inform the public about the savings plan.

(c) Board. This chapter provides an orderly procedure to accomplish the board's responsibilities.

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

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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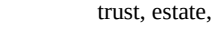

34 TAC §7.2

The Comptroller of Public Accounts proposes an amendment to §7.2, concerning definitions. The amendment deletes the definition of required penalty to reflect changes in federal law applicable to prepaid higher education tuition programs.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 include informing the public about the new Texas higher education savings plan, conforming the rules to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by §529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Education Code, Chapter 54, Subchapter F, §54.602 which authorizes the board to administer the higher education savings plan, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632 which requires the board to comply with §529 of the Internal Revenue Code of 1986.

The amendment implements Education Code, Chapter 54, Subchapter F and Subchapter G.

§7.2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings. Terms used in this chapter and defined in the Education Code, §54.601, shall have the meaning ascribed therein.

(1) Average amount of tuition and required fees--The average amount of tuition and required fees among all institutions within the plan selected by the purchaser.

(2) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(3) Enrollment period--The designated period in each calendar year during which the board will accept applications for enrollment in the program.

(4) Person--Includes an individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(5) Required fees--Those fees imposed on all students as a condition of enrollment at a particular institution of higher education or private or independent institution of higher education. Required fees do not include fees such as laboratory fees or equipment usage fees required for particular courses, charges for room and board, book costs, or any optional fees.

~~[(6) Required penalty--An amount to be retained by the fund, as provided in this chapter or in a prepaid tuition contract, out of a refund or other amount payable under a prepaid tuition contract. The amount of a required penalty shall be equal to 10% of the portion~~

~~of such refund or payment that represents undistributed earnings on the contract.]~~

(6) [~~(7)~~] Staff--Employees of the comptroller selected by the comptroller to serve as staff of the board and assist in the performance of duties delegated to the comptroller by the board.

(7) [~~(8)~~] Tuition--The charges imposed by an institution of higher education or private or independent institution of higher education on undergraduates as a condition of enrollment, as identified by such institution. Where applicable, a reference to tuition shall be deemed a reference to resident tuition rates unless otherwise specified.

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

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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34 TAC §7.3

The Comptroller of Public Accounts proposes an amendment to §7.3, concerning tax exempt status requirements. The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 include informing the public about the new Texas higher education savings plan, conforming the rules to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by §529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Education Code, Chapter 54, Subchapter F, §54.602 which authorizes the board to administer the higher education savings plan, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632 which requires the board to comply with §529 of the Internal Revenue Code of 1986.

The amendment implements Education Code, Chapter 54, Subchapter F and Subchapter G.

§7.3. Tax Exempt Status Requirements.

(a) The provisions of this section are intended to meet the requirements of the Internal Revenue Code, §529.

(b) All payments of amounts due to the fund for a prepaid tuition contract must be made in cash. No person may make payments to the fund in excess of the amounts required to be paid under the prepaid tuition contract selected by the purchaser.

(c) A separate accounting shall be maintained for each beneficiary.

(d) The purchaser of a prepaid tuition contract and the beneficiary of the contract shall have no ability to directly or indirectly control or direct the investment of the payments made under the contract or any earnings of the fund.

(e) The purchaser of a prepaid tuition contract and the beneficiary of the contract cannot use any interest in the contract as security for a loan or other obligation.

(f) The board shall make such reports as the Secretary of the Treasury shall require.

~~[(g) Required penalties shall be imposed on refunds and other payments under a prepaid tuition contract as provided in this chapter or in the prepaid tuition contract. The amount of any refund or other payment to which a person is otherwise entitled under a prepaid tuition contract shall be reduced by the amount of any required penalty thereon.]~~

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

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Deputy General Counsel for Taxation
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SUBCHAPTER G. BENEFICIARIES

34 TAC §7.63

The Comptroller of Public Accounts proposes an amendment to §7.63, concerning change of beneficiary. The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 include informing the public about the new Texas higher education savings plan, conforming the rules

to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by §529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632, which requires the board to comply with §529 of the Internal Revenue Code of 1986 in imposing penalties for refunds.

This amendment implements Education Code, Chapter 54, Subchapter F.

§7.63. Change of Beneficiary.

(a) The purchaser of a prepaid tuition contract may substitute one beneficiary for another subject to the following conditions:

(1) the new beneficiary must meet the requirements of a qualified beneficiary on the date the designation is changed, including residency requirements;

(2) the new beneficiary is a member of the family of the original beneficiary who meets the requirements of the Internal Revenue Code of 1986, §529 so that the change of beneficiary is not treated as a distribution under that law;

(3) documentation must be submitted evidencing the relationship of the beneficiaries;

(4) the purchaser must pay any amounts that would have been paid under the contract originally had the new beneficiary been designated at the time the original beneficiary was designated, plus any required fees specified in the board's fee schedule; and

(5) the original beneficiary has not used any contract benefits.

(b) Amounts paid before the beneficiary is changed shall be credited against amounts due at the time of the change. If the amount due at the time of the change is less than the amount paid prior to the change, such amount shall be credited against other amounts due through the term of the contract. If the amount paid prior to change exceeds the amounts due through the term of the contract, the amount in excess of the amounts due shall be refunded to the purchaser [~~subject to a required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements)~~].

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

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Martin Cherry
Deputy General Counsel for Taxation
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SUBCHAPTER H. CONVERSION

34 TAC §7.71

The Comptroller of Public Accounts proposes an amendment to §7.71, concerning conversions. The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 rules will include informing the public about the new Texas higher education savings plan, conforming the rules to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by §529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment to §7.71 is proposed under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632, which requires the board to comply with Section 529 of the Internal Revenue Code of 1986 in imposing penalties for refunds.

The amendment implements Education Code, Chapter 54, Subchapter F.

§7.71. Conversion.

(a) Plans are designed to be flexible and to allow beneficiaries to attend their choice of institutions of higher education or private or independent institutions of higher education.

(b) A purchaser may convert a prepaid tuition contract from one plan to another plan during the annual enrollment period specified by the board and upon payment of any additional amounts due under

the plan to which the contract is converted plus any required fees specified in the board's fee schedule. The value at the time of conversion of the contract under the original plan shall be credited against amounts due upon conversion. Such value shall be the present lump sum actuarial value of the average amount of tuition and required fees for junior college plans, junior/senior college plans, and senior college plans and the estimated amount of private tuition and required fees for the private college plan. For contracts that are paid in full, the payment of additional amounts for conversion is determined by applying the value at the time of the conversion of the contract purchased under the original plan to the cost of the new plan. For contracts that are not paid in full, the payment of additional amounts for conversion is determined by applying the pro rata amount of the value at the time of conversion of the contract purchased under the original plan to the cost of the new plan, such pro rata amount determined by the number of payments paid under the contract under the original plan by the purchaser to the number of payments required to pay the contract under the original plan in full. If the amount due under the plan to which the contract is converted is less than the value at the time of conversion of the contract under the original plan, such excess amounts shall be credited against other amounts due through the term of the contract. If the amount to be credited under the preceding sentence exceeds the amount due through the term of the contract, such excess shall be refunded to the purchaser less any applicable fees [~~and less a required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements)~~].

(c) A purchaser may transfer ownership of a prepaid tuition contract to another eligible purchaser, provided the transfer is accomplished without consideration and, if the beneficiary is a nonresident of Texas, the substitute purchaser meets the applicable residency requirements.

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

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Deputy General Counsel for Taxation
Comptroller of Public Accounts
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34 TAC §7.72

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

The Comptroller of Public Accounts proposes the repeal of §7.72, concerning required penalties on certain payments. The rule is repealed to reflect changes in federal law which no longer requires the penalties.

James LeBas, chief revenue estimator, has determined that the repeal of the rule will not result in any fiscal implications to the state or to units of local governments.

Mr. LeBas also has determined that the repeal will not have an adverse economic effect on small or micro businesses.

Written comments on the repeal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094.

This repeal is proposed under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program, and §54.632, which requires the board to comply with §529 of the Internal Revenue Code of 1986 in imposing penalties for refunds.

This repeal implements Education Code, Chapter 54, Subchapter F.

§7.72. Required Penalties on Certain Payments.

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

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202427
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-0387

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SUBCHAPTER I. REFUNDS, TERMINATION

34 TAC §7.81

The Comptroller of Public Accounts proposes an amendment to §7.81, concerning refunds. The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 rules will include informing the public about the new Texas higher education savings plan, conforming the rule to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas higher education savings plan to take advantage of the federal income tax benefits provided by §529, Internal Revenue Code of 1986, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment to §7.81 is proposed under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of the Prepaid

Higher Education Tuition Program, and §54.632, which requires the board to comply with §529 of the Internal Revenue Code of 1986 in imposing penalties for refunds.

This amendment implements Education Code, Chapter 54, Subchapter F.

§7.81. Refunds.

(a) Refunds shall be made in accordance with provisions of these rules and the prepaid tuition contract, in a manner that will not adversely affect the tax status of the program under applicable provisions of the Internal Revenue Code, as amended from time to time. Refunds shall be governed by these rules as amended and as in effect on the date the request for refund is submitted to the board. In general, it is the board's intent that the amount of any refund shall be the sum of all payments made under the contract for tuition and required fees, less fees due and payable to the program under the board's fee schedule and less any amounts paid by the program pursuant to the prepaid tuition contract prior to the refund.

(b) Refunds shall be made to the purchaser of the prepaid tuition contract unless otherwise designated by the purchaser in writing to the board in the event of the purchaser's death.

(c) Should a beneficiary terminate his/her student status on or after the date on which the institution denies refunds to students withdrawing for a particular semester, no refund shall be paid under the prepaid tuition contract for amounts relating to such semester.

(d) Examples of circumstances under these rules in which refunds may be made include, but are not limited to, the following.

(1) Under any plan if the beneficiary receives a full scholarship for tuition and required fees, the amount of tuition and required fees that would have been paid under the plan selected may be refunded. Under a junior college plan, junior/senior college plan, or a senior college plan, the amount of such refund shall not exceed the tuition scholarship amount. Refund payments may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(2) Under the junior college plan, junior/senior college plan or senior college plan, if a beneficiary receives a partial scholarship for tuition and required fees, the tuition scholarship amount may be refunded. Under the private college plan, if a beneficiary receives a partial scholarship, a refund may be made in an amount equal to the excess of the estimated average private tuition and required fee amounts, over the actual tuition and required fee amounts less the scholarship amount. [~~Such amount will be subject to a required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements).~~] Refund payments up to the amount determined in accordance with this paragraph may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(3) If the beneficiary dies or becomes disabled (within the meaning of the Internal Revenue Code, §529(b)(3)) while attending an institution of higher education or a private or independent institution of higher education, the amount of benefits remaining available under the prepaid tuition contract, less any applicable fees, may be refunded. A lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board.

(4) If the beneficiary dies or becomes disabled (within the meaning of the Internal Revenue Code, §529(b)(3)) after having graduated from high school but prior to attending an institution of higher education or a private or independent institution of higher education, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. Under the junior college plan, junior/senior college plan, or senior college plan, the refund will equal the average amount of tuition and required fees in effect at the time the refund is requested. Under the private college plan, the refund will equal the estimated average of private tuition and required fees as determined annually by the board.

(5) If the beneficiary dies or becomes disabled before the contract is paid in full, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. For junior college plans, junior/senior college plans, or senior college plans, the refund amount will be equal to a pro rata amount of the average amount of tuition and required fees in effect at the time the refund is requested, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full. For private college plans, the refund amount will be equal to a pro rata amount of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full.

(6) If a prepaid tuition contract is terminated under §7.82(c) of this title (relating to Termination of Prepaid Tuition Contract), such contract may be refunded in an amount equal to the present lump sum actuarial value, as of the date of termination, of the average amount of tuition or the estimated amount of private tuition and required fees of junior college plans, junior/senior college plans or the estimated amount of private tuition and required fees for the private college plan, less [~~the required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements);~~]a cancellation fee; and any other applicable fee. In no case shall a refund be made in an amount less than the total amount paid by the purchaser under the contract less any applicable administrative fees or amounts previously distributed.

(7) If the purchaser who selected the junior college plan, junior/senior college plan, or senior college plan dies or becomes disabled and payments cease before the contract is paid in full, and unless otherwise directed by the purchaser in writing, a refund may be made. The refund amount will be equal to a percentage of the average amount of tuition and required fees in effect at the time the refund is requested, determined by reference to the percentage of payments made under the contract by the purchaser[~~, and such amount will be subject to a required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements)~~]. If the purchaser who selected the private college plan dies or becomes disabled and payments cease before the contract is paid in full, a refund may be made. The refund amount will be equal to a percentage of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, determined by reference to the percentage of payments made under the contract by the purchaser[~~, and such amount will be subject to a required penalty under §7.3(g) of this title~~]. A lump sum refund may be made within 60 days to the purchaser of the prepaid tuition contract unless otherwise specified in

writing by the purchaser as described in this paragraph. In the alternative, contract benefits may be converted to a plan with reduced benefits. Proof of death or disability shall be in a form acceptable to the board. Notwithstanding any other provision of this paragraph, the purchaser, in a writing to the board, and providing such other information as the board may request, may designate a person who shall have a right of survivorship with respect to purchaser's rights and obligations pursuant to a prepaid tuition contract; provided that such designation shall in no way affect the purchaser's ability to modify or terminate the contract and receive a refund without the consent or authorization of the designee.

(8) Refunds may be made for other reasons as approved by the board[~~subject to required penalties as determined by the board under §7.3(g) of this title (relating to Tax Exempt Status Requirements)~~]. By way of example, such refunds may be made in an amount equal to the lowest amount of tuition and required fees of all institutions under the plan selected, less a cancellation fee[~~and less a required penalty under §7.3(g) of this title~~]. Refund payments may be made in semiannual installments to the purchaser of the prepaid tuition contract.

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

Filed with the Office of the Secretary of State on April 19, 2002.

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER K. HIGHER EDUCATION SAVINGS PLAN

34 TAC §§7.101 - 7.111

The Comptroller of Public Accounts proposes new §§7.101-7.111, concerning the Higher Education Savings Plan. These rules establish administrative and procedural guidelines for a new Higher Education Savings Plan which will allow individuals to make contributions to a higher education savings account, while taking advantage of federal income tax benefits under Internal Revenue Code of 1986, §529, as amended. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 7, new Subchapter K: Higher Education Savings Plan.

James LeBas, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on state or local governments as a result of enforcing or administering the rule.

Mr. LeBas 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 include informing the public about the new Texas Higher Education Savings Plan, conforming the rules to federal tax law changes, providing more flexibility to individuals in the mechanisms available in Texas to help fund a college education, and allowing individuals the opportunity to utilize a Texas Higher Education Savings Plan to take advantage of the federal income tax benefits provided by Internal Revenue Code of 1986, §529, as amended. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Mr. LeBas also has determined that the proposed rule will not have an adverse economic effect on small or micro businesses.

Written comments on the proposal may be addressed to Andrew Ruth, Director, Special Programs, P.O. Box 13407, Austin, Texas 78711-3407, phone: 1-800-531-5441 ext. 62094. If a person wants to ensure that the board considers a comment made about this proposal, then the person must ensure that the board receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new rules are proposed under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules to implement Subchapter F, and Education Code, Chapter 54, Subchapter G, §§54.702, 54.708, and 54.710, which authorize the board to adopt rules governing the Higher Education Savings Plan.

The new rules implement Education Code, Chapter 54, Subchapter G.

§7.101. Definitions.

The following words, terms, and phrases, when used in this subchapter, shall have the following meanings.

(1) Beneficiary--The designated individual whose qualified higher education expenses are expected to be paid from a savings trust account.

(2) Financial institution--A bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution that is authorized to transact business in this state.

(3) Nonqualified withdrawal--A withdrawal from a savings trust account other than:

(A) a qualified withdrawal;

(B) a withdrawal that is made as the result of the death or disability of the beneficiary of the account; or

(C) a withdrawal that is made as a result of the receipt of a scholarship or an allowance or payment that is described in Internal Revenue Code of 1986, §135(d)(1)(B) or (C), as amended, and that the beneficiary has received, to the extent that the amount of the withdrawal does not exceed the amount of the scholarship, allowance, or payment, in accordance with federal law.

(4) Owner--The individual, trust, estate, Uniform Gift to Minors Act (UGMA) custodian or Uniform Transfer to Minors Act (UTMA) custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof that results from transfers by operation of law, that owns a savings trust account under a savings trust agreement between the board and that individual, trust, estate, UGMA or UTMA custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof.

(5) Plan manager--A financial institution that is under contract with the board to serve as a plan administrator.

(6) Qualified higher education expenses--Tuition, fees, books, supplies, and equipment that are required for the enrollment or attendance of a beneficiary at an eligible educational institution as

defined by Internal Revenue Code of 1986, §529, as amended, and including in certain instances the following:

(A) In the case of a special needs beneficiary, "qualified higher education expenses" include expenses for special needs services that are incurred in connection with enrollment or attendance of the beneficiary at an eligible educational institution; and

(B) To the extent permitted by Internal Revenue Code of 1986, §529, as amended, beneficiaries who live off-campus and not at home may include in "qualified higher education expenses" a reasonable room and board allowance as determined by the eligible educational institution, and beneficiaries who live on campus may include in "qualified higher education expenses" the actual invoice amount that is charged for room and board, if that amount is greater than the allowance.

(7) Qualified withdrawal--A withdrawal from a savings trust account to pay the qualified higher education expenses of the beneficiary of the account.

(8) Savings trust account--An account that an owner establishes through the savings plan under this subchapter and Education Code, Chapter 54, Subchapter G, on behalf of a beneficiary for the purpose of applying distributions from the account toward qualified higher education expenses at eligible educational institutions.

(9) Savings trust agreement--The agreement between the owner that establishes a savings trust account and the board, which may be amended over time.

(10) Special needs beneficiary--A beneficiary who, because of a physical, mental, or emotional condition, including a learning disability, requires additional time to complete education courses or degree requirements. This definition shall be automatically amended from time to time to conform with the definition of special needs beneficiary in any proposed, temporary, or final Treasury Department regulations. The board may adopt policies and procedures by which a beneficiary's status as a special needs beneficiary will be determined.

§7.102. General Provisions.

(a) Applicability of this subchapter. This subchapter applies to each savings trust agreement.

(b) Rights of owners and beneficiaries. The rights of an owner or a beneficiary under a savings trust agreement are subject to:

(1) Education Code, Chapter 54, Subchapter G;

(2) this subchapter; and

(3) the terms and conditions of that agreement.

(c) Composition and content of savings trust agreements.

(1) The savings trust agreement between the board and an owner consists of:

(A) the application for enrollment that the owner submitted to the plan manager that has custody of the owner's savings trust account; and

(B) the master agreement for the savings plan, except when the agreement irreconcilably conflicts with Education Code, Chapter 54, Subchapter G; Internal Revenue Code of 1986, §529, as amended; regulations thereunder; or this subchapter.

(2) The savings trust agreement between the board and an owner is governed by:

(A) the terms of the agreement;

(B) this subchapter;

(C) Education Code, Chapter 54, Subchapter G, and any other applicable law of this state; and

(D) Internal Revenue Code of 1986, §529, as amended, regulations thereunder, and any other applicable federal law.

(3) The savings trust agreement between the board and an owner must contain the information that is required by Education Code, §54.707(c) and §54.709(d).

(d) Conflicts between Education Code, Chapter 54, Subchapter G, and the Internal Revenue Code of 1986, §529, as amended, or this subchapter and the master agreement. To the extent of irreconcilable conflict, the provisions of Internal Revenue Code of 1986, §529, as amended, and regulations thereunder; Education Code, Chapter 54, Subchapter G; and this subchapter prevail over the master agreement for the savings plan. The agreement is at all times subject to this subchapter. Any amendment to Internal Revenue Code of 1986, §529; Education Code, Chapter 54, Subchapter G; or this subchapter that would apply to the savings plan, a savings trust agreement, or a savings trust account will automatically constitute an amendment to the savings trust agreement.

(e) Disclosures and promotion of the plan.

(1) Every savings trust agreement, deposit slip, or similar document that is used in connection with a contribution to a savings trust account must clearly indicate that:

(A) the account is not insured by this state; and

(B) neither the principal that is deposited nor the investment return is guaranteed by this state.

(2) The promotional material or other savings plan information that is distributed to an owner or beneficiary shall disclose that:

(A) no money that is invested in the savings plan is insured by this state; and

(B) neither the principal that is deposited nor the investment return is guaranteed by this state.

(3) The promotional material or other savings plan information that is provided to the public, an owner, or a beneficiary must disclose the administrative fees and service charges that are imposed under Education Code, Chapter 54, Subchapter G.

(4) The promotion of or other form of disclosure of information about the savings plan to an owner or a beneficiary must be done in a manner that is consistent with:

(A) Education Code, Chapter 54, Subchapter G; and

(B) Internal Revenue Code of 1986, §529, as amended.

(5) No plan manager, financial institution, or person who acts on behalf of either shall make any representation that is inconsistent with the requirements and limitations of this subchapter, or that is otherwise misleading with respect to any attribute of the savings plan, a savings trust agreement, or a savings trust account.

§7.103. Tax Benefits and Securities Laws Exemptions.

(a) Intent to satisfy tax exempt requirements. This subchapter, the savings plan, each savings trust agreement, and each savings trust account hereunder are intended to satisfy all requirements of:

(1) Internal Revenue Code of 1986, §529, as amended, and regulations thereunder; and

(2) federal securities laws.

(b) Media for making payments to savings trust accounts. Any payment of an amount due to a savings trust account under a savings trust agreement must be made in cash or by electronic funds transfer.

(c) Excess contributions prohibited.

(1) The owner of a savings trust account may not contribute to the account any sum that would cause the balance of the account to exceed the amount that is required to pay the qualified higher education expenses of the beneficiary of the account. Contributions to a savings trust account may not be made if, as a result thereof, the balance of the savings trust account would exceed the sum of four times the cost of one year of undergraduate tuition, fees, books, supplies, and room and board at the most expensive educational institution that is eligible for the savings plan, and three times the cost of one year of graduate school tuition, fees, books, supplies, and room and board at the most expensive graduate school that is eligible for the savings plan, which amount will be determined and published annually by the board. Contributions to a savings trust account during a calendar year shall be limited to the amount, if any, by which the foregoing sum exceeds the balance of that savings trust account (together with the balance of all other savings trust accounts that are maintained under the savings plan for the beneficiary of that savings trust account) as of the end of the immediately preceding year. Any contribution that exceeds that limit will be promptly refunded, without interest or earnings, to the account's owner.

(2) A plan manager shall monitor contributions to each savings trust account that is in the manager's custody, to ensure compliance with any applicable limits on contributions.

(3) In application of these rules, the plan manager must determine whether the beneficiary of a savings trust account is the beneficiary of any other qualified tuition program under Internal Revenue Code of 1986, §529, as amended, that is maintained by the state, and must enforce the foregoing limitation on contributions by incorporating all other such accounts into calculations of allowed contributions.

(d) Separate accountings. A plan manager shall maintain a separate accounting for each savings trust account in the manager's custody.

(e) Investment and earnings control prohibited. Except as provided in §7.106(f) of this title (relating to investment alternatives), neither the owner of a savings trust account nor the beneficiary of that account may control or direct the investment of:

(1) the principal of the account; or

(2) any earnings of the account.

(f) Pledge of interest as security prohibited. Neither the owner of a savings trust account nor the beneficiary of that account may:

(1) assign any interest in the account for the benefit of a creditor;

(2) use any interest in the account as security or collateral for a loan or other obligation; or

(3) otherwise alienate, sell, transfer, assign, pledge, encumber, or charge any interest in the account.

(g) Reports. A plan manager shall make reports that are required by:

(1) Internal Revenue Code of 1986, §529, as amended; and

(2) any other applicable tax law.

(h) Policies and procedures. Except where in conflict with Education Code, Chapter 54, Subchapter G, or this subchapter, the board may adopt any policy or procedure, and such policy or procedure automatically amends each outstanding savings trust agreement as necessary for:

(1) the savings plan to obtain or maintain qualification as a qualified tuition program under Internal Revenue Code of 1986, §529, as amended;

(2) owners and beneficiaries to obtain or maintain the federal income tax benefits or favorable treatment that is provided by Internal Revenue Code of 1986, §529, as amended; or

(3) the savings plan to obtain or maintain exemption from registration under federal securities laws.

§7.104. Enrollment.

(a) Enrollment period. The savings plan will have an open, continuous enrollment period.

(b) Date on which applications for enrollment are considered to have been received. For purposes of this section:

(1) if an application for enrollment has an official postmark date that is affixed by the United States Postal Service, a plan manager is considered to have received the application on the earlier of:

(A) the official postmark date; or

(B) the date that is reflected on the date stamp to the application or equivalent documentation that evidences actual receipt of the application by the plan manager; or

(2) if an application for enrollment does not have an official postmark date that is affixed by the United States Postal Service, a plan manager is considered to have received the application on the date that is reflected on the date stamp to the application or equivalent documentation that evidences actual receipt of the application by the plan manager.

(c) Limitations on enrollment. The board may limit enrollment in the savings plan as the board considers necessary.

(d) Opening of savings trust account. A prospective owner may open a savings trust account if:

(1) the prospective owner enters into a savings trust agreement with the board;

(2) the prospective owner makes the minimum contribution that the plan manager that has custody of the account requires; and

(3) the maintenance and funding of the account would not cause excess contributions in violation of §7.103(c) of this title (relating to Excess Contributions Prohibited).

§7.105. Administrative Fees and Service Charges.

To be determined in consultation with the selected plan manager(s).

§7.106. Plan Managers.

(a) Access to books and records. A plan manager shall provide the comptroller with access to the books and records of the manager as the comptroller determines necessary to assess the manager's compliance with Education Code, Chapter 54, Subchapter G, this subchapter, the savings trust agreement, or the contract between the board and the manager.

(b) Savings trust accounts. A plan manager shall hold each savings trust account in trust. Notwithstanding the foregoing, the Texas Trust Code shall not apply to a savings trust agreement or a savings trust account.

(c) Investments. A plan manager shall ensure that each investment by the manager is made with the judgment and care that a person

of prudence, discretion, and intelligence would exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, with consideration of the probable income as well as the probable safety of capital.

(d) Marketing of savings plan.

(1) A plan manager shall develop a strategy to market the savings plan and present the strategy to the board for review. If the board approves the strategy, the manager shall fully implement that strategy.

(2) A plan manager may contract with a financial institution to market the savings plan on behalf of the manager.

(e) Account services. A plan manager may contract with a financial institution to provide account services to the owner of a savings trust account that the manager administers. The institution may charge a fee or commission for those services.

(f) Investment alternatives. The plan manager may formulate a variety of alternative investment strategies for savings trust accounts, so long as such strategies are consistent with the requirements and limitations of Internal Revenue Code of 1986, §529, as amended, and the regulations thereunder. An owner is entitled to select a strategy from among such alternatives, as permitted by Internal Revenue Code of 1986, §529, as amended.

(g) Board review. From time to time, and in accordance with procedures that the board establishes, the board shall review, monitor, and audit the actions of the plan manager and financial institutions, as described in subsections (c), (d), (e), and (f) above, and without impairment to any other right that the board may have to terminate a contract with a plan manager, may terminate the contract with a plan manager or withdraw its approval to any of the above matters, if in its judgment the board finds that continuation of that contract or the continued approval is not in the best interests of the owners and beneficiaries, so long as such action is consistent with rights and obligations of the board under the savings trust agreement.

§7.107. Beneficiaries.

Any individual may be the beneficiary of a savings trust account, including the owner of that account.

§7.108. Roll-Overs.

In the case of a roll-over contribution from another qualified tuition plan into a savings trust account, the board shall require that the owner provide additional information and certifications to confirm that the contribution is a qualified roll-over under Internal Revenue Code §529, as amended, and to properly specify that portion of the contribution that is attributable to the investment in the account that was maintained under the previous qualified tuition program and that portion of the contribution that is attributable to earnings that were accumulated in that account.

§7.109. Owners.

A savings trust account may only be established with one owner at the time it is opened, and thereafter shall have only one owner except when owned by more than one individual, trust, estate, or UGMA/UTMA custodian, guardian, corporation, non-profit entity, or other legal entity (or any combination thereof) as a result of a transfer by operation of law.

§7.110. Replacement of Beneficiary.

(a) Criteria for being a qualified replacement beneficiary. An individual may be the qualified replacement beneficiary of a savings trust agreement if:

(1) the individual is a member of the family of the former beneficiary who satisfies the requirements of Internal Revenue Code of 1986, §529(e)(2), as amended, so that the change of beneficiary is not treated as a distribution under that law; and

(2) documentation that evidences the relationship between the individual and the former beneficiary is submitted to the plan manager that has custody of the savings trust account.

(b) Conditions for replacement of beneficiary. The owner of a savings trust agreement may replace the beneficiary of that agreement with another individual only if:

(1) the individual is a qualified replacement beneficiary as described in subsection (a) of this section; and

(2) the owner pays to the plan manager that has custody of the savings trust account any fees that are required under the board's administrative fee and service charge schedule.

§7.111. Withdrawals.

(a) General provisions. The owner of a savings trust account may withdraw any amount from that account if:

(1) the withdrawal is made in accordance with Education Code, Chapter 54, Subchapter G; this subchapter; and the applicable savings trust agreement;

(2) the owner certifies to the appropriate plan manager the portion, if any, of the withdrawal that constitutes a nonqualified withdrawal; and

(3) the withdrawal would not adversely affect the tax status of the savings plan under applicable provisions of Internal Revenue Code of 1986, as amended. Notwithstanding the owner's certifications that are described in clause (2) above, the board may independently determine the extent to which any withdrawal constitutes a nonqualified withdrawal.

(b) Responsibility of plan managers. A plan manager shall monitor withdrawals from each savings trust account in the manager's custody to ensure compliance with any applicable limitations on withdrawals.

(c) Examples of particular types of withdrawals. The circumstances under which a withdrawal is authorized include the following.

(1) If the beneficiary of a savings trust agreement receives a full or partial scholarship for tuition and required fees, the owner of the agreement may withdraw the amount of the scholarship from the savings trust account. A withdrawal under this paragraph may occur:

(A) only as each academic term occurs; and

(B) only if proof of the scholarship is submitted to the plan manager that has custody of the account, in a form that is acceptable to the plan manager.

(2) If the beneficiary of a savings trust agreement dies or becomes disabled within the meaning of Internal Revenue Code of 1986, §529(b)(3)(B), as amended:

(A) The owner of the agreement may withdraw the entire balance of the savings trust account or replace the deceased or disabled beneficiary with a qualified replacement beneficiary as provided in §7.110 of this title (relating to Replacement of Beneficiary).

(B) If the owner of the agreement requests a withdrawal, the appropriate plan manager shall pay the withdrawal to the owner not later than the 60th day after the date on which the plan manager receives proof of the death or disability in a form that is acceptable to the plan manager.

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

Filed with the Office of the Secretary of State on April 19, 2002.

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.107

The Comptroller of Public Accounts proposes a new §9.107, concerning appraised value limitation and tax credit for certain qualified property. The new rule is proposed to implement House Bill 1200, 77th Legislature, 2001, effective January 1, 2002.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas 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 in providing taxpayers with additional information regarding their tax responsibilities. The new rule would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This new section is proposed under Tax Code, §313.031(a), which requires the comptroller to adopt rules and forms necessary for the implementation and administration of the provisions of the Tax Code, Chapter 313.

The new section implements Tax Code, Chapter 313.

§9.107. Appraised Value Limitation and Tax Credit for Certain Qualified Property.

(a) Appraised value limitation applicant restriction. Corporations and limited liability companies that are subject to franchise tax under Tax Code, §171.001, may apply to the governing body of a school district for a limitation on the appraised value of qualified property in a reinvestment zone subject to the requirements and restrictions in this section. Sole proprietorships, partnerships, and limited liability partnerships are not eligible to apply. Corporations and limited liability companies that qualify for a limitation on the appraised value may also be eligible for a tax credit.

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

(1) Impact fee--A charge or assessment that is imposed against a qualified property to generate revenue for funding or recoupment of the costs of capital improvements or facility expansions for water, wastewater, or storm water services or for roads that are necessitated by or attributable to property that receives a limitation on appraised value under this section.

(2) Manufacturing--An establishment that is primarily engaged in activities that are described in categories 2011-3999 of the 1987 Standard Industrial Classification Manual that the federal Office of Management and Budget publishes.

(3) Qualified investment--Investment that an owner proposes to build or install and that will qualify the owner for a limitation in the appraised value of qualified property. The term does not include land, but means:

(A) tangible personal property that is described as Section 1245 property by Internal Revenue Code of 1986, §1245(a), and that is first placed in service in Texas during the applicable qualifying time period that begins after December 31, 2001;

(B) tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins after December 31, 2001, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product. For purposes of this subparagraph, tangible personal property is neither required to be affixed to or incorporated into real property, nor required to be actually located in the cleanroom environment. Examples include integrated systems, fixtures, and piping; property that is necessary or adapted to reduce contamination or to control environmental conditions (e.g. airflow, temperature, humidity, or chemical purity) or to control manufacturing tolerances; and production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;

(C) a building or a permanent, non-removable component of a building that is built or constructed during the applicable qualifying time period that begins after December 31, 2001, and that houses tangible personal property described by subparagraph (A) or (B) of this paragraph; or

(D) any property that is described in subparagraphs (A)-(C) of this paragraph that is leased under a capitalized lease, but excludes any property that is leased under an operating lease.

(4) Qualifying job--A new permanent full-time job that:

(A) requires at least 1,600 hours of work per year;

(B) is not transferred from one area in this state to another area in this state;

(C) is not created to replace a previous employee;

(D) is covered by a group health benefit plan, as defined by Government Code, §481.151, for which the business pays or offers to pay at least 80% of the premiums or other charges that are assessed for employee-only coverage under the plan; and

(E) pays at least 110% of the county average weekly wage for manufacturing jobs as computed by the Texas Workforce Commission for the county where the job is located.

(5) Qualified property--Property that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, or renewable energy generation and consists of:

(A) a new building or other new improvement that does not exist before the date on which the owner applies for an appraised value limitation;

(B) land that is not subject to a tax abatement agreement into which a school district has entered under Tax Code, Chapter 312;

and is located in an area that is designated as a reinvestment zone under Tax Code, Chapter 311 or Chapter 312, or as an enterprise zone under Government Code, Chapter 2303, on which the owner:

(i) proposes to construct, erect, or affix a new building or new improvement that does not exist before the date on which the owner applies for an appraised value limitation; and,

(ii) in connection with that new building or new improvement, also proposes to make at least the minimum amount of qualified investment required by this section; and,

(iii) proposes to create at least 10 new jobs if the land is in a rural school district or at least 25 new jobs if the land is in a school district that is not a rural school district.

(C) tangible personal property that is either first placed in service in the new building or in or on the new improvement that did not exist before the date on which the owner applies for an appraised value limitation (unless the property is considered a semiconductor fabrication cleanroom or equipment under Tax Code, §151.318(q)) or first placed in service on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business that is conducted in that new building or in or on that new improvement. To qualify, tangible personal property may not be subject to a tax abatement agreement into which a school district has entered under Tax Code, Chapter 312.

(6) Qualifying time period--The first two tax years that begin on or after the date on which the approval of an application for a limitation on appraised value occurs.

(7) Renewable energy electric generation--An establishment that is primarily engaged in activities that are described in category 221119 of the 1997 North American Industry Classification System.

(8) Research and development--An establishment that is primarily engaged in activities that are described in category 8731 of the 1987 Standard Industrial Classification Manual that the federal Office of Management and Budget publishes.

(9) Rural school district--A school district that has territory in a strategic investment area, as defined by Tax Code, §171.721, or in a county:

(A) that has a population of less than 50,000;

(B) that is not partially or wholly located in a metropolitan statistical area; and

(C) in which, from 1990 to 2000, according to the federal decennial census, the population remained the same; decreased; or increased, but at a rate of not more than 3.0% per annum.

(c) Forms.

(1) The comptroller adopts by reference the following model forms:

(A) Application For Appraised Value Limitation On Qualified Property (Form 50-296); and

(B) Application For Tax Credit On Qualified Property (Form 50-300).

(2) The comptroller will make available model forms that are adopted by reference in paragraph (1)of this subsection. Copies of the forms are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. After adoption of this rule, copies of the forms may be viewed or downloaded from the comptroller's *Window on State Government* website, at http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(3) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

(4) All school districts and appraisal districts shall make available copies of the comptroller model forms that are adopted by reference in paragraph (1) of this subsection for taxpayers to use in their applications for an appraised value limitation and for tax credit under this section. Subject to the prior written approval requirement that is provided in paragraph (3) of this subsection, if a school district uses a form other than the one that the comptroller has adopted, then the alternate form must also be made available for taxpayers to use.

(d) Requirements and restrictions.

(1) A property owner must file with a school district an application for appraised value limitation before September 4 in the year that precedes the first year in which the owner proposes its qualifying time period to begin, unless the property owner proposes an extension of the 120-day period that is allowed in subsection (f)(1)(H) for the school district to decide on the application, in which instance the property owner must file as many days in advance of September 4 as the number of days in the proposed extension.

(2) The application for appraised value limitation must be:

(A) made on the comptroller's Application For Appraised Value Limitation On Qualified Property (Form 50-296) or an alternate form authorized by subsection (c)(3) of this section;

(B) properly completed;

(C) accompanied by the applicable attachments that are specified on the form; and

(D) accompanied by the applicable application fee.

(3) The applicant must identify and quantify the qualified investment that the applicant proposes to build or install in the reinvestment zone during the qualifying time period, and the information must be sufficient to allow the school district to determine whether the applicant will meet the minimum qualified investment amount that is required for the relevant school district category.

(4) To be eligible for a limitation on appraised value under this section, at least 80% of all the new jobs that the property owner has created must be qualifying jobs as defined in subsection (b)(4) of this section.

(5) Property that a person other than the applicant owns and that is pooled or proposed to be pooled with property that the applicant owns may not be included in determination of the amount of the applicant's qualifying investment.

(e) School district categories and minimum qualified investment requirements.

(1) The minimum amount of qualified investment that this section requires is based on the category in which the school district is classified.

(A) School districts other than rural school districts are categorized according to the district's most recent total taxable value

of property that is determined under Government Code, Chapter 403, Subchapter M (identified as "T2" on the comptroller's print out entitled "School District Summary Worksheet"), as follows:
Figure: 34 TAC §9.107(e)(1)(A)

(B) Rural school districts are categorized according to the sum of the district's most recent market value of industrial real and personal property that is determined under Government Code, Chapter 403, Subchapter M (identified as "F2" and "L2" on the comptroller's print out entitled "School District Summary Worksheet"), less any applicable deductions that are allowed under Government Code, Chapter 403, Subchapter M, for industrial property, as follows:
Figure: 34 TAC §9.107(e)(1)(B)

(2) The minimum qualified investment requirement for each category of school districts other than rural school districts is:
Figure: 34 TAC §9.107(e)(2)

(3) The minimum qualified investment requirement for each category of rural school districts is:
Figure: 34 TAC §9.107(e)(3)

(f) Application review process.

(1) A school district may choose not to consider the application and must notify the applicant of its decision, but if a school district does consider the application, then the following procedures must be followed:

(A) the school district shall immediately send a copy of the application to the comptroller;

(B) the school district shall also send a copy of the application to each appraisal district that appraises property that is described in the application;

(C) the school district, in its discretion, may allow the applicant to supplement the application after the filing date to provide information that is required by the application form that was unavailable prior to the filing date, but must forward any supplemental information that the district has received immediately to the comptroller and the appraisal district;

(D) the school district shall hire a qualified third party to perform an economic impact evaluation. See subsection (g) for further information on economic impact evaluation;

(E) the school district may obtain assistance from the comptroller, Texas Economic Development, the Council on Workforce and Economic Competitiveness, and the Texas Workforce Commission;

(F) the school district shall obtain a recommendation from the comptroller on whether the application should be approved. The comptroller's recommendation shall be made no later than the 61st day from the date on which the comptroller receives a copy of the application from the school district. The comptroller may consider the reported economic evaluation information in the application or any other available information that the comptroller considers relevant, and the comptroller may make a recommendation that is contingent on the receipt of appropriate supplemental information;

(G) the school district must make a written finding on each economic impact evaluation criterion that is listed in this section before the district approves or disapproves the application, and the district shall deliver a copy of those findings to the applicant; and

(H) the school district shall review the application, including the economic impact evaluation, and the comptroller's recommendation, and must approve or disapprove the application within 120 calendar days from the filing date of the application, unless the governing body and the applicant agree to an extension.

(2) The school district may approve the application only if it finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value, and determines that granting the application is in the best interest of the school district and this state.

(3) If a school district grants the application, it must provide written notice to the applicant, the comptroller, and each appraisal district that appraises property that is described in the application. The school district and the property owner shall enter into a written agreement to incorporate the obligations of each party and provide for the appraised value limitation. See subsection (h) of this section for further information on the agreement.

(g) Economic impact evaluation. As provided by subsection (f) of this section, a school district must hire a qualified third party to perform an economic impact evaluation that will analyze the investment proposed in the application for an appraised value limitation and that will assist the school district to determine whether an appraised value limitation would be in the best interest of the school district and this state. The written report must include:

(1) the comptroller's recommendation on the application;

(2) the relationship between the applicant's industry and the types of qualifying jobs to be created by the applicant, to the long-term economic growth plans of this state as described in the strategic plan for economic development that the Texas Strategic Economic Development Planning Commission has submitted under Government Code, §481.033, as that section existed before February 1, 1999;

(3) the relative level of the applicant's investment per qualifying job to be created by the applicant;

(4) the wages, salaries, and benefits to be offered by the applicant to qualifying job-holders;

(5) the ability of the applicant to locate or relocate in another state or another region of this state;

(6) the impact that the added infrastructure will have on the region, including revenue gains that would be realized by the school district, and subsequent economic effects on the local and regional tax bases;

(7) the economic condition of the region of the state at the time when the person's application is being considered;

(8) the number of new facilities that were built or expanded in the region during the two years that preceded the date of the application and that were eligible to apply for a limitation on appraised value under this subsection; and

(9) the effect of the applicant's proposal, if approved, on the number or size of the school district's instructional facilities, as defined by Education Code, §46.001.

(h) Agreement. The written agreement between the school district and the property owner for the appraised value limitation:

(1) must describe with specificity the qualified investment that the person will make on or in connection with the person's qualified property that is subject to the limitation on appraised value under this section. Property that is not specifically described in the agreement is not subject to the appraised valued limitation unless the school district, by official action, provides that other property of the owner is subject to the appraised value limitation;

(2) must incorporate each relevant provision of this section and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms to which the property owner and the school district agree;

(3) must require the property owner to maintain a viable presence in the school district for at least three years after the date on which the limitation on appraised value of the owner's property expires;

(4) must provide for the termination of the agreement, the recapture of ad valorem tax revenue that is lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest or both on that recaptured ad valorem tax revenue;

(5) may specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement; and

(6) must specify the ad valorem tax years that the agreement covers.

(i) Appraised value limitation.

(1) An appraised value limitation applies only to the maintenance and operations portion of a school district's ad valorem tax rate.

(2) A school district may limit the appraised value on qualified property for eight tax years, beginning with the tax year that follows the applicable qualifying time period.

(3) For each tax year in which the appraised value limitation is in effect, the appraised value of the qualified property that is described in the written agreement between the school district and property owner for school district maintenance and operations ad valorem tax may not exceed the lesser of:

(A) the market value of the property; or

(B) the amount to which the school district has agreed, but such amount must be at least the minimum amount of limitation that is set for the applicable school district category and that is enumerated in paragraph (4) of this subsection.

(4) Minimum amount of limitation.

(A) For school districts other than rural school districts:
Figure: 34 TAC §9.107(i)(4)(A)

(B) For rural school districts:
Figure: 34 TAC §9.107(i)(4)(B)

(j) Fees.

(1) Application fee. A school district may establish a reasonable nonrefundable application fee to be paid by a person who applies for a limitation on the appraised value of the person's property under this section. The amount of an application fee may not exceed the school district's estimated cost to process and act on an application, including the cost of the economic impact evaluation that this section requires.

(2) Impact fee. Notwithstanding any other law, including Local Government Code, Chapter 395, a municipality or county may impose and collect from the owner of a qualified property a reasonable impact fee to pay for the cost of providing improvements that are associated with or attributable to property that receives a limitation on appraised value under this section.

(k) Appraisal district responsibility. When appraising a person's qualified property that is subject to a limitation on appraised value under this section, the chief appraiser shall determine the market value of the property and include both the market value and the limited value in the appraisal records.

(l) Property not eligible for tax abatement. Property that is subject to a limitation on appraised value in a tax year under this section is not eligible for tax abatement by a school district under Tax Code, Chapter 312, in that tax year.

(m) Confidential business information. Information that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property that the application that an applicant submits to a school district covers is confidential unless the school district approves the application under this section. A school district may not disclose confidential information to the public.

(n) Tax rate limitation. A school district may not adopt a tax rate that exceeds the school district's rollback tax rate under Tax Code, §26.08, for each tax year during the qualifying time period. If the school district approves a subsequent application for an appraised value limitation while the restriction on the school district's tax rate is in effect, the restriction on the school district's tax rate extends until the expiration of the second anniversary of the subsequent application approval date.

(o) Tax credit.

(1) An owner is entitled to a credit for part of the ad valorem taxes that were paid to a school district for each tax year during the qualifying time period in an amount that is equal to the difference between the amount of tax that was actually paid on the qualified property and the amount of tax that would have been paid based on the appraised value limitation to which the school district agreed, provided that the owner follows the procedures that this subsection requires. The school district tax collector must apply any approved tax credit in the manner and time that is provided in paragraph (3) of this subsection.

(2) To be eligible for a tax credit, an owner must submit an application for tax credit before September 1 of the year that immediately follows the applicable qualifying time period to the school district to which the ad valorem taxes were paid. The application for tax credit must be:

(A) made on the Application for Tax Credit on Qualified Property (Form 50-300) or an alternative form that is authorized by subsection (c)(3) of this section;

(B) accompanied by tax receipts from the collector of taxes for the school district that show full payment of school district ad valorem taxes on the qualified property for the applicable qualifying time period;

(C) accompanied by a copy of the agreement between the applicant and the school district under Tax Code, §313.027 or §313.051; and

(D) accompanied by any other document or information that the comptroller or the school district considers ne0cessary for a determination of the applicant's eligibility for the tax credit or the amount of the tax credit.

(3) A school district must determine the owner's eligibility for a tax credit before the 90th day after the date on which the application for a tax credit is received by the school district. If a school district determines that the owner is eligible for a tax credit and verifies the total tax credit that has been computed as provided by paragraph (1) of this subsection, then the school district shall direct its tax collector to apply the tax credit against any taxes that the school district imposes on the qualified property as follows:

(A) subject to the limitation that is imposed by subparagraph (B) of this paragraph, apply one- seventh of the total tax credit for seven tax years beginning with the tax year that follows the tax year in which the application for tax credit was approved, and for six tax years thereafter;

(B) the maximum amount of tax credit that may be applied in each tax year may not exceed 50% of the total amount of ad valorem school taxes that the school district imposes on the qualified property in that tax year;

(C) apply any tax credit that remains as a result of the application of the cap that is imposed by subparagraph (B) of this paragraph in the first tax year that begins on or after the date on which the owner's eligibility for the appraised value limitation expires under this section, but the maximum amount may not exceed the total amount of ad valorem school taxes that the school district has imposed on the qualified property in that tax year. Any remaining tax credit that is not used under this subparagraph expires.

(4) No tax credit will be allowed for either the tax year in which the owner relocates the business outside the school district or the tax years thereafter.

(5) If the comptroller and a school district determine that a person who received a tax credit was either not eligible for the credit or received more credit than the person was entitled, then the school district shall impose an additional tax on the qualified property that is equal to the amount of tax credit that was erroneously taken, plus interest at an annual rate of 7.0% calculated from the date on which the credit was issued.

(A) A tax lien attaches to the qualified property in favor of the school district to secure payment by the person of the additional tax and interest that are imposed and any penalties incurred.

(B) A person who is delinquent in the payment of an additional tax may not submit a subsequent application or receive a tax credit under this subsection in a subsequent year.

(p) Property list by chief appraiser. Each year, the chief appraiser shall compile and send to Texas Economic Development a list of properties, including both taxable real and personal property that a person owns at one site, that are in the appraisal district in that tax year that have a market value of $100 million or more or are subject to a limitation on appraised value under Tax Code, Chapter 313. The list shall include, at a minimum, the appraisal district name, the name of any other appraisal district that appraises the property, the appraisal district number that the comptroller has assigned, the name of each school district that taxes the property, each school district number that the education agency has assigned, each account number that the appraisal district has assigned, each taxpayer name, the market value of the taxable real and personal property that the taxpayer owns at that site, the taxable value of the taxable real and personal property that the taxpayer owns at that site, the tax year to which the listed information pertains, and the name and telephone number of a person at the appraisal district who is responsible for the information that is contained in the list.

(q) School district designation of reinvestment zone.

(1) The governing body of a school district may approve qualified land that is located in an area that is designated as a reinvestment zone under Tax Code, Chapter 311 or Chapter 312, or as an enterprise zone under Government Code, Chapter 2303, by the commissioners court of each county and the governing body of each municipality, provided that all the qualified land falls within this designated zone.

(2) The governing body of a school district, in the manner that is required for official action and for purposes of Tax Code, Chapter 313, Subchapter B or C, may designate an area that is entirely within the territory of the school district as a reinvestment zone under Tax Code, §312.0025, if the governing body finds that, as a result of the designation and the granting of a limitation on appraised value under Chapter 313, Subchapter B or C, for property that is located in the reinvestment zone, the designation is reasonably likely to:

(A) contribute to the expansion of primary employment in the reinvestment zone; or

(B) attract major investment in the reinvestment zone that would benefit property in the reinvestment zone and the school district, and contribute to the economic development of the region of this state in which the school district is located.

(3) The governing body of the school district may seek the recommendation of the commissioners court of each county and the governing body of each municipality that has territory in the school district before designating an area as a reinvestment zone under subsection (q)(2).

(r) Timeline. The following is an example of the timeline to be used for the appraised value limitation and tax credit under House Bill 1200, 77th Legislature, 2001. The timeline is intended as a visual aid to help the applicants' understanding of the overall appraised value limitation and tax credit process. Any conflict between this timeline and the specific language of this rule shall be resolved in favor of the specific language of the rule.
34 TAC 9.107(r)

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

Filed with the Office of the Secretary of State on April, 22, 2002.

TRD-200202463
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION
SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.5, §423.7

The Texas Commission on Fire Protection (TCFP) proposes changes to §423.5 and §423.7 concerning minimum standards for intermediate and advanced structure fire protection personnel certifications. Proposed changes to §423.5 and §423.7 add course options for applicants to meet the certification requirements.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five- year

period the rule actions are in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed changes are in effect the public benefit anticipated as a result of enforcing the rule actions will be an increase in the number of structure fire protection personnel who are eligible to apply for higher level certifications.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed changes.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The changes are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed changes.

§423.5. Minimum Standards for Intermediate Structure Fire Protection Personnel Certification.

(a) Applicants for Intermediate Structure Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Structure Fire Protection Personnel Certification as defined in §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

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

§423.7. Minimum Standards for Advanced Structure Fire Protection Personnel Certification.

(a) Applicants for Advanced Structure Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Structure Fire Protection Personnel Certification as defined in §423.5 of this title (relating to Minimum Standards for Intermediate Structure Fire Protection Personnel Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

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

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202376
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.205, §423.207

The Texas Commission on Fire Protection (TCFP) proposes changes to §423.205 and §423.207 concerning minimum standards for intermediate and advanced aircraft rescue fire fighting personnel certifications. Proposed changes to §423.205 and §423.207 add course options for applicants to meet the certification requirements and update the term "Aircraft Fire Protection Personnel" to "Aircraft Rescue Fire Fighting Personnel."

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five- year period the rule actions are in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed changes are in effect the public benefit anticipated as a result of enforcing the rule actions will be an increase in the number of aircraft fire fighting personnel who are eligible to apply for higher level certifications.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed changes.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The changes are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed changes.

§423.205. Minimum Standards for Intermediate Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification.

(a) Applicants for Intermediate Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification as defined in §423.203 of this title (relating to Minimum Standards for Basic Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting [~~Personnel~~] Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.207. Minimum Standards for Advanced Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification.

(a) Applicants for Advanced Aircraft Rescue Fire Fighting [~~Protection~~] Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification as defined in §423.205 of this title (relating to Minimum Standards for Intermediate [~~Advanced~~] Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting [~~Protection~~] Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

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

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SUBCHAPTER C. MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

37 TAC §423.305, §423.307

The Texas Commission on Fire Protection (TCFP) proposes changes to §423.305 and §423.307 concerning minimum standards for intermediate and advanced marine fire protection personnel certifications. Proposed changes to §423.305 and §423.307 add course options for applicants to meet the certification requirements.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five- year period the rule actions are in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed changes are in effect the public benefit anticipated as a result of enforcing the rule actions will be an increase in the number of marine fire protection personnel who are eligible to apply for higher level certifications.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed changes.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The changes are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed changes.

§423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel Certification.

(a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Marine Fire Protection Personnel Certification as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification).

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option #4 - Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

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

§423.307. Minimum Standards For Advanced Marine Fire Protection Personnel Certification.

(a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Marine Fire Protection Personnel Certification as defined in §423.305 of this title (relating to Minimum Standards for Intermediate Marine Fire Protection Personnel Certification).

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option #4 - Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the commission curricula. Evidence of completion of the appropriate courses shall be a certification from the commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b)-(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.

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CHAPTER 431. FIRE INVESTIGATION
SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.3, 431.5, 431.7, 431.13

The Texas Commission on Fire Protection (TCFP) proposes changes to §§431.3, 431.5, and 431.7, concerning minimum standards for basic, intermediate, and advanced arson investigator certifications. Amendments to §431.3 clarify the name of the TCFP's fire investigation curriculum, update the number of hours of instruction in a National Fire Academy program for fire investigation which an individual must successfully complete in order to be certified as Basic Arson Investigator, and establishes an additional option for becoming eligible to take the TCFP's written examination for fire investigator certification. Amendments to §431.5 and §431.7 add options for completing the course requirements for intermediate and advanced arson investigator certifications. The TCFP also proposes new §431.13, International Fire Service Accreditation Congress (IFSAC) Certification, concerning application to the TCFP for IFSAC seals.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended section is in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amended sections will be an increase in the number of eligible applicants for fire investigator and arson investigator certifications.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The amendments and new section are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed amendments.

§431.3. Minimum Standards for Basic Arson Investigator Certification.

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current commission as a peace officer with the employing entity for which the arson investigations will be done;

(3) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire investigation training program shall consist of one of the following:

(A) completion of the commission approved [~~Basic~~] Fire Investigator Curriculum, as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual);

(B) successful completion of a minimum of 128[~~122~~] hours of instruction in a National Fire Academy program for fire investigation. The program must include the basic course, Fire Arson Investigation, and any combination of the following courses or their predecessor:

(i) Arson Detection; or

(ii) Fire Cause Determination for Company Officers; or

(iii) Initial Fire Investigation; or

(iv) Management of Arson Prevention and Control.

(C) successful completion of an out-of-state or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved [~~Basic~~] Fire Investigator Curriculum as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual"; or

(D) successful completion of the following college courses: Arson Investigator, 3 semester hours; Hazardous Materials, 3 semester hours; Building Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. NOTE: The three semester hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination requirements.

(d) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator shall be eligible to take the commission written examination for Fire Investigator.

§431.5. Minimum Standards for Intermediate Arson Investigator Certification.

(a) Applicants for Intermediate Arson Investigator Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Arson Investigator Certification as defined in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

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

§431.7. Minimum Standards for Advanced Arson Investigator Certification.

(a) Applicants for Advanced Arson Investigator certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Arson Investigator Certification as defined in §431.5 of this title (relating to Minimum Standards for Intermediate Arson Investigator Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section;

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses;

(C) Option 3--Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses; or

(D) Option 4--Advanced Arson for Profit (Bureau of Alcohol, Tobacco, and Firearms resident or field course, 80 hours)

(E) Option 5--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 5 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

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

§431.13. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Arson Investigator certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved basic fire investigator program and passing the applicable state examination may be granted IFSAC Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

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

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Executive Director
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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.205

The Texas Commission on Fire Protection (TCFP) proposes new §431.205, International Fire Service Accreditation Congress (IFSAC) Certification, concerning application to the TCFP for IFSAC seals for fire investigator.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five- year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section will be an increase in the number of eligible applicants for fire investigator certification.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed new section.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The new section is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed new section.

§431.205. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Fire Investigator certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved basic fire investigator program and passing the applicable state examination may be granted IFSAC Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

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

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.5, §439.13

The Texas Commission on Fire Protection (TCFP) proposes changes to §439.5 and §439.13, concerning the examination procedure and testing for proof of proficiency. Amendments to §439.5 specify that training providers, except for Basic Fire Suppression Academies, shall test for competency in all performance skills developed for a particular curriculum. Amendments to §439.13 establish that persons who are called to active military duty are not considered to have a break in service, so they would not have to retest to obtain new certificates.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five- year period the amended sections are in effect there will be no fiscal implications for state governments. Local governments will pay less in examination fees for their fire protection personnel returning from active military duty.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be more thoroughly tested fire protection personnel and an easier renewal process for fire protection personnel who are returning from active military duty.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.032, which provides the TCFP with the authority to establish standards for basic certification tests for fire protection personnel.

Texas Government Code, §419.032, is affected by the proposed amendments.

§439.5. Procedures.

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

(f) During the course of instruction, the provider of training, except for a Basic Fire Suppression academy identified in subsection (e) of this section, shall test for competency all performance skills listed in the applicable curriculum. This applies only for curricula in which performance standards have been developed. Retests must be conducted prior to the completion of the course. All skills must be demonstrated before a commission approved field examiner.

(g) [~~(f)~~] Commission examinations, or retests, for less than eight (8) examinees must be conducted in Austin, Texas, or other place designated by the commission. The commission must coordinate with the provider of training as to the time of the examination.

(h) [~~(g)~~] Commission examinations, or retests, for less than eight (8) examinees must be conducted in accordance with this section, provided that entity providing the training agrees to pay an examination fee equal to the amount that would be charged for eight (8) examinees.

(i) [~~(h)~~] If a performance test is part of the commission examination, examinees that are required to take the commission examination in Austin, Texas, or other place designated by the commission, shall be required to furnish a complete set of protective clothing that complies with §435.1(2) (Relating to Protective Clothing). Examinees are encouraged, but not required, to provide a self-contained breathing apparatus that complies with §435.3(2) (Relating to Self-Contained Breathing Apparatus) that the examinee is familiar with and an extra full cylinder.

(j) [~~(i)~~] If the designated training officer or coordinator of the entity providing the training determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such request due consideration and may reschedule or relocate the examination as necessary.

(k) [~~(j)~~] Each examination must be administered by a member of the commission staff known as a "Staff Examiner."

(l) [~~(k)~~] The staff examiner may administer the examination alone or with the assistance of one or more additional examiners. The additional examiners shall be known as field examiners and shall be approved by the commission.

(m) [~~(l)~~] The staff examiner must:

(1) ensure that the examination remains secure and is conducted under conditions warranting honest results; and

(2) collect all examination materials from any examinee who is dismissed.

(n) [~~(m)~~] The staff examiner or field examiner must:

(1) monitor the examination while in progress;

(2) control entrance to and exit from the test site;

(3) permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;

(4) assign or re-assign seating; and

(5) bar admission to or dismiss any examinee who fails to comply with any of the provisions of subsections (a) and (b) of this section.

(o) [~~(n)~~] Examination booklets, answer sheets, scratch paper and grade roster(s) will be delivered to the staff examiner by means specified by the commission. The staff examiner must immediately document any errors detected in the examination materials provided.

(p) [~~(o)~~] The staff examiner must remit to the commission all examination booklets, answer sheets and scratch paper in the return container provided by the commission immediately following the completion of the written examination.

(q) [~~(p)~~] All official grading and notification must come from the commission. The commission staff must inform the training officer or coordinator of preliminary test results within three (3) business days after completion of the examination. The commission staff must notify the training officer or coordinator of the official test results in writing within thirty (30) days after completion of the examination.

(r) [~~(q)~~] The commission will provide one individual grade report to each examinee. If the grade report should prove to be undeliverable, it shall be the responsibility of the examinee to contact the commission office to make arrangements for an additional grade report.

(s) [~~(r)~~] If performance skills are required as part of a certification examination, the entity applying for the certification examination shall be responsible for providing the required number of Approved Field Examiners. The number of Field Examiners shall be determined by the commission.

(t) [~~(s)~~] Each written examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.

(u) [~~(t)~~] An individual who has documented completion of commission approved Fire Fighter II training will be allowed to take the Basic Fire Suppression Fire Fighter II examination, if it has been less than four years since the individual has passed the commission's Basic Fire Suppression Fire Fighter I written and performance evaluation.

§439.13. Testing for Proof of Proficiency.

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

(c) An individual [~~For the purposes of this section, the time that a person serves in the military~~] who is called to active military duty in accordance with applicable federal law [~~or that a person serves in the state legislature who qualifies for legislative leave under the provisions of Texas Civil Statutes, Article 6252-4c,~~] is not considered to have a break in service [~~for any reason and the person is not required to complete the examination requirement upon return to employment to a fire protection personnel position in order to obtain a new certificate, provided that the individual must comply with the continuing education requirement applicable to the certificate previously held by the individual after the effective date of this rule except as provided by federal law~~]. That person would not have to complete the examination requirement upon return to employment as a fire protection personnel. To obtain a new certificate, the individual must submit the renewal fee and documentation for 20 hours of continuing education.

(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.

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §441.5, concerning continuing education. The proposed amendment clarifies that an individual who is not a member of a paid or volunteer fire department is not required to obtain documentation from the head of a fire department to apply for an exemption from the TCFP's continuing education requirements due to accident or injury.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the amended section is in effect there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period that the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be a clearer understanding of the TCFP's intent with regard to exemptions from continuing education requirements due to injury or illness There are no additional costs of compliance anticipated for small or large businesses.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768- 2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to adopt rules relating to continuing education requirements for fire protection personnel.

Texas Government Code, §419.032, is affected by the proposed amendment.

§441.5. Requirements.

(a)-(j) (No change.)

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel assigned to that discipline, may be exempted from the continuing education requirement for the current renewal period. Commission staff shall determine the exemption using[~~with~~] documentation of the illness or injury that cumulatively lasts six months or longer, from documentation[~~and time frames~~] provided by the individual and the individual's treating physician[~~in accordance with the preceding subsection~~].

(l)-(m) (No change.)

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

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CHAPTER 451. FIRE OFFICER
SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.1, §451.3

The Texas Commission on Fire Protection (TCFP) proposes changes to §451.1 and §451.3, concerning minimum standards for Fire Officer I certification. Amendments to §451.1 remove the references to the effective date of the section and the one-year window of opportunity for individuals with previous training to challenge the certification examination. Amendments to §451.3 remove references to the effective date of the section.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amended sections will be that standardized training requirements for Fire Officer I certification will ensure high standards for training specific to the management of fire department operations.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amended sections.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed amendments.

§451.1. Fire Officer I Certification.

[~~(a) The effective date of this section shall be February 1, 2001.~~]

[~~(b)~~] A Fire Officer I is defined as an individual who may supervise fire personnel during emergency and non-emergency work periods; serve in a public relations capacity with members of the community; implement departmental policies and procedures at the unit level; secure fire scenes and perform fire investigations to determine preliminary cause; conduct pre-incident planning; supervise emergency operations; or ensure a safe working environment for all personnel.

[~~(c) Within one year of the effective date of this section, an individual may apply for certification as a Fire Officer I and is eligible to take the commission examination for Fire Officer I, upon documentation to the Commission that the individual has completed the Fire Officer I training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 2 (1997 edition, or earlier). Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.~~]

§451.3. Minimum Standards for Fire Officer I Certification.

(a) [~~The effective date of this section shall be February 1, 2001.~~] Training programs that are intended to satisfy the requirements of this section [~~, that are started on or after the effective date of this section,~~] must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

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

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202386
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.201, §451.203

The Texas Commission on Fire Protection (TCFP) proposes changes to §451.201 and §451.203, concerning minimum standards for Fire Officer II certification. Amendments to §451.201 remove the references to the effective date of the section and the one-year window of opportunity for individuals with previous training to challenge the certification examination. Amendments to §451.203 remove references to the effective date of the section.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amended sections will be that standardized training requirements for Fire Officer II certification will ensure high standards for training specific to the management of fire department operations.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amended sections.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed amendments.

§451.201. Fire Officer II Certification.

~~[(a) The effective date of this section shall be February 1, 2001.]~~

[~~(b)~~] A Fire Officer II is defined as an individual who may evaluate the performance of personnel; deliver public education programs; prepare budget requests, news releases, and policy changes; conduct inspections and investigations; supervise multi- unit emergency operations; and identify unsafe work environments and take preventive action; or review injury, accident, and health exposure reports. Individuals who perform inspections must comply with Chapter 429 of this title (relating to Minimum Standards for Fire Inspectors). Individuals who perform investigations must comply with Chapter 431 of this title (relating to Fire Investigation).

~~[(c) Within one year of the effective date of this section, an individual may apply for certification as a Fire Officer II and is eligible to take the commission examination for Fire Officer II, upon documentation to the Commission that the individual has completed the Fire Officer II training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 3 (1997 edition, or earlier), and holds, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission. Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.]~~

§451.203. Minimum Standards for Fire Officer II Certification.

(a) [~~The effective date of this section shall be February 1, 2001.~~] Training programs that are intended to satisfy the requirements of this section [~~, that are started on or after the effective date of this section,~~] must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

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

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202387
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 239-4921

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CHAPTER 473. VOLUNTEER FIRE FIGHTER

37 TAC §473.11

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

The Texas Commission on Fire Protection (TCFP) proposes the repeal of Chapter 473, Volunteer Fire Fighter, which consists only of §473.11, concerning International Fire Service Accreditation Congress (IFSAC) certification for volunteer fire fighters. The proposed repeal removes language that is currently found in 37 TAC §423.13 of the TCFP's rules.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period following the repeal of the section there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period following the proposed repeal of the section, the anticipated public benefit is a clearer understanding of the TCFP's rules from the removal of duplicated information. There are no additional costs of compliance anticipated for small or large businesses.

Comments on the proposed repeal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rule actions for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the TCFP with the authority to propose rule actions concerning voluntary certification standards for volunteer fire protection personnel.

Texas Government Code, §419.071, is affected by the proposed repeal.

§473.11. International Fire Service Accreditation Congress (IFSAC) Certification.

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202388
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 239-4921

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CHAPTER 481. VOLUNTEER FIRE FIGHTER FEES

37 TAC §481.13

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

The Texas Commission on Fire Protection (TCFP) proposes the repeal of Chapter 481, Volunteer Fire Fighter Fees, which consists of only §481.13, concerning fees charged for individual International Fire Service Accreditation Congress (IFSAC) seals. The proposed repeal removes language that is currently found in 37 TAC §423.13 of the TCFP's rules.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period following the repeal of the section there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period following the proposed repeal of the section, the anticipated public benefit is a clearer understanding of the TCFP's rules by the removal of duplicated information. There are no additional costs of compliance anticipated for small or large businesses.

Comments on the proposed repeal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rule actions for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the TCFP with the authority to propose rule actions concerning voluntary certification standards for volunteer fire protection personnel.

Texas Government Code, §419.071, is affected by the proposed repeal.

§481.13. Fees--International Fire Service Accreditation Congress (IFSAC) Seal.

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202389
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.403, §19.423

The Texas Department of Human Services (DHS) proposes to amend §19.403, concerning notice of rights and services, and new §19.423, concerning model drug testing policy, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment and new section is to implement House Bill (HB) 1418, 77th Legislature, which requires facilities to provide residents, next of kin, or guardians with written notification regarding their drug testing and criminal history check policies. HB 1418 also requires a model drug testing policy in rule.

James R. Hine, Commissioner, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be enhanced resident safety and better access to provider policies regarding drug testing and criminal history checks of employees. There will be no adverse economic effect on small or micro businesses, because the drug testing and criminal history check polices only involve modification of current notification. There is no anticipated economic cost to persons who are required to comply with the proposed sections. If a provider chooses to develop a drug testing policy, the financial impact on the provider would vary depending on the policy developed. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Connie Pate at (512) 438- 3529 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-126, 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 and new section are proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment and new section implement the Health and Safety Code, §§242.001- 242.804.

§19.403. Notice of Rights and Services.

(a) (No change.)

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) (No change.)

(2) a description of the protection of personal funds as described in §19.404 of this title (relating to Protection of Resident Funds); [~~and~~]

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

(5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:

(A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment.

(c) - (l) (No change.)

§19.423. Model Drug Testing Policy. The Texas Department of Human Services

(a) (DHS) is required to provide a model drug testing policy to nursing facilities under the Health and Safety Code, §242.050. A nursing facility is not required to perform drug testing on its employees or applicants for employment. Although this policy only covers drugs, coverage of alcohol may be added. Before implementing any drug testing policy, including the following model policy, DHS recommends that a facility discuss the policy with its attorney.

(1) Policy.

(A) (NURSING FACILITY NAME) has a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug on the job poses serious safety and health risks to the user, co-workers, and residents. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace poses unacceptable risks for safe, healthy, and efficient operations.

(B) (NURSING FACILITY NAME) has the obligation to maintain a safe, healthy and efficient workplace for all of its employees and residents, and to protect the facility's property, information, equipment, operations, and reputation.

(C) (NURSING FACILITY NAME) recognizes its obligation to its residents to provide services that are free of the influence of illegal drugs and endeavors through this policy to provide drug-free services.

(D) (NURSING FACILITY NAME) complies with federal and state rules, regulations, or laws that relate to the maintenance of a workplace free from illegal drugs.

(E) All employees are required to abide by the terms of this policy and to notify management of any criminal drug statute conviction for a violation that occurred in the workplace no later than five days after such conviction.

(2) Purpose. This policy outlines the goals and objectives of (NURSING FACILITY NAME'S) drug testing program and provides guidance to supervisors and employees concerning their responsibilities for carrying out the program.

(3) Scope. This policy applies to all departments, all employees, and all job applicants. The term employee includes contracted employees.

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

(A) Facility premises--All property of (NURSING FACILITY NAME) including, but not limited to, the offices, facilities, and surrounding areas on (NURSING FACILITY NAME)-owned or -leased property, parking lots, and storage areas. The term also includes (NURSING FACILITY NAME)-owned or -leased vehicles and equipment.

(B) Drug testing--The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(C) Illegal drug--Any drug that is not legally obtainable. Examples of illegal drugs are marijuana, cocaine, heroin, methamphetamines, and phencyclidine (PCP).

(D) Legal drug--Any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which it was prescribed or manufactured.

(E) Reasonable belief--A belief based on facts sufficient to lead a prudent person to conclude that a particular employee is unable to perform his or her job duties due to drug impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

(F) Under the influence--A condition in which a person is affected by a drug in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion; a scientifically valid test, such as urinalysis or blood analysis; and in some cases by the opinion of a layperson.

(5) Education.

(A) Management personnel are to be trained to:

(i) detect the signs and behavior of employees who may be using drugs in violation of this policy; and

(ii) intervene in situations that may involve violations of this policy.

(B) Employees are to be informed of the provisions of this policy.

(6) Prohibited activities.

(A) Legal drugs. (NURSING FACILITY NAME) reserves the right at all times to judge the effect that a legal drug may have on an employee's job performance and to restrict the employee's work activity or presence at the workplace accordingly.

(B) Illegal drugs. The use, sale, purchase, transfer, or possession of an illegal drug by any employee while on (NURSING FACILITY NAME) premises or while performing (NURSING FACILITY NAME) business is prohibited.

(7) Discipline.

(A) Any employee who possesses, distributes, sells, attempts to sell, or transfers illegal drugs on (NURSING FACILITY NAME) premises or while on (NURSING FACILITY NAME) business will be subject to immediate discharge.

(B) Any employee found through drug testing to have in his or her body a detectable amount of an illegal drug will be subject to discipline up to and including discharge. An employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program, approved by (NURSING FACILITY NAME), at the employee's expense. During rehabilitation, the employee will be subject to unannounced drug testing. Upon return to work from rehabilitation, the employee may be subject to unannounced drug testing at (NURSING FACILITY NAME) expense for a period of 12 months. Any employee whose test is confirmed as positive during or following rehabilitation will be subjected to immediate discharge.

(8) Drug testing for job applicants.

(A) All applicants for employment, including applicants for part-time and seasonal positions and applicants who are former employees, are subject to drug testing.

(B) If an applicant refuses to take a drug test, or if evidence of the use of illegal drugs by an applicant is discovered, either through testing or other means, the pre-employment process will be terminated.

(C) An applicant must pass the drug test to be considered for employment.

(D) An applicant will be provided written notice of this policy and, by signature, will be required to acknowledge receipt and understanding of the policy before being tested.

(9) Drug testing of employees.

(A) (NURSING FACILITY NAME) will notify employees of this policy by:

(i) providing them with a copy of the policy and obtaining written acknowledgement that the policy has been received and read.

(ii) announcing the policy in written communications and making presentations at employee meetings.

(B) (NURSING FACILITY NAME) will perform drug testing:

(i) of any employee who exhibits "reasonable belief" behavior;

(ii) of each employee who has direct contact with residents annually;

(iii) of any employee who is subject to drug testing pursuant to federal or state rules, regulations, or laws;

(iv) on a random basis of any employee.

(C) An employee's consent to submit to drug testing is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

(D) An employee who is tested in a "reasonable belief" situation may be suspended pending receipt of written test results and inquiries that may be required.

(10) Appeal of a drug test result.

(A) An applicant or employee whose drug test was positive will have an opportunity to explain why the positive finding could have resulted from a cause other than drug use. (NURSING FACILITY NAME) will judge whether the employee's explanation merits further inquiry.

(B) An applicant or employee whose drug test is reported positive will be offered the opportunity to:

(i) obtain and independently test, at their expense, the remaining portion of the urine specimen that yielded the positive result; and

(ii) obtain the written test result and submit it to an independent medical review, at their expense.

(C) During an appeal and any resulting inquiries, the pre-employment selection process for an applicant will be placed on hold, and the employment status of an employee may be suspended. An employee who is suspended pending appeal may use any available annual leave to remain in an active pay status. If the employee has no annual leave or chooses not to use it, the suspension will be without pay.

(11) Confidentiality. All information related to drug testing or the identification of persons as users of drugs will be protected by (NURSING FACILITY NAME) as confidential unless otherwise required by law or overriding public health and safety concerns, or authorized in writing by the persons in question.

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

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202453
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 438-3734

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PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

CHAPTER 334. REVIEW OF FIRE FIGHTER TESTS

40 TAC §334.1

The Commissioners of the Texas Commission on Human Rights (TCHR) propose a new §334.1, concerning review of paid and combination local fire department tests. This rule is necessary to provide procedures for the TCHR to review the initial tests administered by paid and combination local fire departments and used to measure the ability of the applicant to perform the essential functions of a job. The TCHR will review the tests to determine whether the tests are administered in a manner that complies with Chapter 21 of the Texas Labor Code.

This rule establishes procedures for determining whether the administration of a test has an adverse impact on any covered class. This rule is aimed at reducing actual discrimination through the review process. Therefore, where there are warning signs of potentially harmful employment transactions, the Commission can provide recommendations and technical assistance to ensure compliance with Chapter 21 of the Labor Code.

Proposed §334.1 clarifies what constitutes an initial test, the general powers and duties of the TCHR, what processes the TCHR will utilize in conducting its review of tests, how many departments are to be reviewed, how the various departments will be selected, and notice requirements the TCHR will use in conducting its review of initial tests.

J. D. Powell, Executive Director, Texas Commission on Human Rights, has determined that for each year of the first five years the proposal is in effect, there will be a fiscal impact on state government as a result of enforcing and administering the proposed section. Specifically, it is estimated that the Commission on Human Rights would require 8 additional FTEs to review fire department tests. This estimate assumes that a total of 100 reviews would be conducted by the Commission each year in order to complete the reviews in a five year cycle. There will be no adverse effect on local employment or the local economy.

Mr. Powell has determined that for each of the first five years the proposal is in effect there are public benefits anticipated as

a result of the adoption of this proposed section. Specifically, paid and combination local fire departments will be able to ascertain whether the initial tests given in the recruitment of firefighters does or does not create a disparate impact on one or more covered classes. As issues related to the fair employment of citizens are addressed, this should in turn reduce financial liability to the State of Texas in responding to complaints, handling internal grievances and dealing with matters involving external litigation.

The economic cost to comply with this proposed section is the result of a legislative mandate that requires adoption of these rules in order to review the initial tests which are administered by a fire department. This section is intended to comply with the goals of the statute. This proposed section does not mandate any action not required by the Legislature and therefore imposes no costs other than those imposed by state law.

Mr. Powell has determined that there is neither an economic cost nor adverse impact on small businesses as a result of this proposed section. The purpose of this rule is to determine and ensure that the initial tests administered by a fire department are in compliance with Chapter 21 of the Texas Labor Code. Thus, there is no adverse economic effect upon small businesses. The requirements of the rule should not be waived.

Comments on the proposed amendment must be submitted within 30 days after the publication of the proposed section in the *Texas Register* to Katherine A. Antwi, General Counsel, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711, or katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the General Counsel.

This new section is proposed under the Texas Government Code, Section 419.102(b) which provides the Texas Commission on Human Rights the authority to adopt procedural rules to carry out the purposes Subchapter F of Senate Bill Number 382.

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

§334.1. Review of Fire Department Tests.

(a) The Texas Commission on Human Rights shall review the administration of tests by paid and combination local fire departments to determine whether the tests are administered in a manner that complies with the Texas Labor Code. The initial tests, which are defined as (1) written tests, (2) physical tests, and (3) assessment center tests for a beginning firefighter position, are used to measure the ability of a person to perform the essential functions of a job as a paid and combination local fire protection personnel.

(b) The Texas Commission on Human Rights shall exercise those general powers as provided in the TEX. GOVT. CODE, Chapter 419, §§419.103 - 419.105.

(c) The Texas Commission on Human Rights shall adopt the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the administration of initial tests by paid and combination local fire departments.

(d) The Texas Commission on Human Rights will review no less than five percent (5%) of the total number of paid and combination local fire departments each fiscal year. The Texas Commission on Human Rights will divide the number of paid and combination local fire departments into the five major regions of the state. Within each region, the Texas Commission on Human Rights shall determine the paid and combination local fire departments to review by random selection with a predetermined parameter based on geography. The selections will be made by the twentieth day of each September for the fiscal year.

(e) If a paid and combination local fire department's initial tests are to be reviewed, said fire department shall receive notice via certified mail and on the commission's website. The review of each fire department's initial tests shall be completed and recommendations issued on or before the one year anniversary date in which the Texas Commission on Human Rights issued its notification letter to the head of the fire department and the review thereby commenced.

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

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202400
Katherine A. Antwi
General Counsel
Texas Commission on Human Rights
Earliest possible date of adoption: June 2, 2002
For further information, please call: (512) 437-3458

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WITHDRAWN RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

SUBCHAPTER E. FEES

40 TAC §183.573

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission for the Deaf and Hard of Hearing has been automatically withdrawn. The amended section as proposed appeared in the October 19, 2001 issue of the *Texas Register* (26 TexReg 8332).

Filed with the Office of the Secretary of State on April 24, 2002.

TRD-200202500

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS
SUBCHAPTER L. ELECTRONIC STORAGE MEDIUM STANDARDS

1 TAC §81.412

The Office of the Secretary of State, Elections Division, adopts new §81.412, concerning the standards an optical disk or other electronic storage medium must meet to enable voter registrars to record voter registration applications and other documentation in that storage medium. Section 81.412 was published in the March 15, 2002 issue of the *Texas Register* (27 TexReg 1953).

The new §81.412 replaces §81.88, which is repealed. The new rule contains wording that will clarify a reference to the rules of the Texas State Library and Archives Commission

No public comments were submitted concerning the new rule.

The rule is adopted pursuant to the Election Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State authority to promulgate rules to obtain uniformity in the interpretation and application of the Code.

The Election Code, Chapter 13, subchapter D, §13.104 is affected by this proposed rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202430
David Roberts
General Counsel
Office of the Secretary of State
Effective date: May 9, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 463-5562

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION
SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §§111.14, 111.17, 111.28

The Texas Building and Procurement Commission adopts amendments to Title 1, T.A.C., Chapter 111, Subchapter B - Historically Underutilized Business Program - §111.14, relating to subcontracts; §111.17, relating to the Certification Process; and §111.28 relating to the Mentor Protege Program. Sections 111.14 and 111.17 are adopted without changes to the proposed text that was published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1954) and the text will not be republished. Section 111.28 is adopted with changes to the proposed text in (27 TexReg 1954) and will be published.

The amendments are adopted due to the enactment of Senate Bill 311, Article 13, 77th Legislative Session (2001), which amended the statutory language of §§2161.061 and 2161.253,Texas Government Code. The amended statutory language found in §13.01, SB 311 relates to the Commission's approval of local governments or nonprofit organizations certification programs for businesses that substantially fall under the same definition for a Historically Underutilized Business found in §2161.001, Texas Government Code. Amended statutory language in §13.02, SB 311 determines that a contractor has made a good faith effort if a contractor participates in a Mentor Protege Program and submits a protege as a subcontractor in the contractor's historically underutilized business subcontracting plan.

Language has been added to the second sentence in §111.28(h) to clarify that §111.28 only applies to contracts which require a HUB subcontracting plan ($100,000 or more), and not all contracts. The added language reads "which requires a HUB subcontracting plan" inserted between the words "agency" and "and the Mentor Protege Agreement . . ." In addition, a typo found in §111.14(b)(4) has been corrected to read "good faith effort" instead of "good faith efforts".

The amendments add language in Title 1, T.A.C., Chapter 111, Subchapter B, that is compliant with Article 13, Senate Bill 311, 77th Legislative Section (2001) relating to the Historically Underutilized Business Certification Program and the Mentor Protege Program.

The following entity furnished written comments on the proposed amendments: The Texas Lottery Commission

The Texas Lottery Commission commented that certain language in §111.28(h) relating to "contractor's/vendor's use of HUB proteges in developing and submitting their HUB Subcontracting Plans " is specifically related to §111.14(c) and should be moved to that section. The Lottery Commission further recommended that certain language in §111.28(k) that "outlines specific requirements that a contractor/vendor must adhere to in order to use a HUB Protege as a subcontractor" be moved to §111.14(b)(4) " in order to clarify that approved Mentor Protege Agreements are valid for all state agencies in determining the contractor/vendor's good faith efforts when subcontracting is required."

It was also recommended that language be added to §111.28(l) to clarify "how the registered list of approved mentors and proteges would be updated by the TBPC if agreements were terminated".

The Texas Building and Procurement Commission (TBPC) has fully considered the comments made by the Texas Lottery Commission and disagrees. The TBPC finds that relocating language in §§111.14 and 111.28 would not further add to or clarify the proposed language.

The TBPC also disagrees that language in §111.28(l) requires further clarification as to how the registered list of approved mentors and proteges is updated when Mentor Protege agreements are terminated. §111.28(l) indicates that the TBPC shall "maintain and make available to state agencies all registered Mentor Protege Agreements". Sponsoring agencies are required to report the termination of an existing Mentor Protege Agreement that has been registered with the TBPC. Therefore, maintenance of the registered Mentored Protege Agreements list would include tracking and updating information on terminated Mentor Protege Agreements.

The amendments are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2161.002, 2161.061, and 2161.253, which provide the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

§111.28. Mentor Protege Program.

(a) In accordance with the Texas Government Code, Section 2161.065, the commission shall design a Mentor Protege Program to foster long-term relationships between contractors/vendors and Historically Underutilized Businesses (HUBs) and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract. The objective of the Mentor Protege Program is to provide professional guidance and support to the protege to facilitate their development and growth. All participation is voluntary and program features should remain flexible so as to maximize participation. Each state agency with a biennial appropriation that exceeds $10 million shall implement a Mentor Protege Program.

(b) In efforts to design a Mentor Protege Program, each agency, because of its unique mission and resources, is encouraged to implement a Mentor Protege Program that considers;

(1) the needs of protege businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the agency's Program; and

(3) the agency's staff and resources.

(c) Agencies may elect to implement Mentor Protege Programs individually or cooperatively with other agencies, and/or other public entities and private organizations, with skills, resources and experience in Mentor Protege Programs. Agencies are encouraged to implement a Mentor Protege Program to address the needs of its protege businesses in the following critical areas of the state's procurements:

(1) construction,

(2) commodities, and/or

(3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor Protege Program:

(1) Develop and implement internal procedures, including an application process, regarding the Mentor Protege Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protege businesses;

(2) Recruit contractor/vendor mentors and Proteges to voluntarily participate in the Program;

(3) Establish a Mentor Protege Program objective identifying both the roles and expectations of the agency, mentor and the Protege;

(4) Monitor the progress of the mentor protege relationship;

(5) Identify key agency resources including senior managers and procurement personnel to assist with the implementation of the Program; and

(6) Encourage partnerships with local governmental and nonprofit entities to implement a community based Mentor Protege Program.

(e) An agency's Mentor Protege Program must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies may consider the following criteria:

(1) whether the mentor is a registered bidder on the commission's Centralized Master Bidders List (CMBL);

(2) whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the Protege, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and/or other related resources;

(3) whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(4) whether the mentor has mentoring experience; and

(5) whether the mentor has a successful past work history with the agency.

(f) An agency's Mentor Protege Program must include protege eligibility and selection criteria. In determining the eligibility and selection of HUB Proteges, state agencies may use the following criteria:

(1) whether the protege is eligible and willing to become certified as a HUB;

(2) whether the protege's business has been operational for at least one year;

(3) whether the protege is willing to participate with a mentoring firm and will identify the type of guidance that is needed for its development;

(4) whether the protege is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies; and

(5) whether the protege is involved in a mentoring relationship with another contractor/vendor.

(g) The mentor and the protege should agree on the nature of their involvement under the agency's mentor/protege initiative. Each agency will monitor the process of the relationship. The mentor and protege relationship should be reduced to writing and that agreement may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protege needs guidance ;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) name, address, phone and fax numbers, and the points of contact that will oversee the agreement of the mentor and Protege;

(4) procedure for a mentor firm to notify the protege in advance if it intends to voluntarily withdraw from the program or terminate the mentor protege relationship;

(5) procedure for a protege firm to notify the mentor in advance if it intends to terminate the mentor protege relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor protege relationship to the state agency.

(h) The protege must maintain its HUB certification status for the duration of the agreement. If a contractor/vendor has been awarded a contract with a state agency, which requires a HUB subcontracting plan, and the Mentor Protege Agreement is terminated, or the Protege's HUB certification expires, the contractor/vendor must either

(1) enter into a new agreement with a certified HUB Protege, or

(2) comply with the requirements of this title relating to developing and submitting a HUB subcontracting plan.

(i) Each agency must notify its mentors and Proteges that participation is voluntary. The notice must include written documentation that participation in the agency's Mentor Protege Program is neither a guarantee for a contract opportunity nor a promise of business; but the Program's intent is to foster positive long-term business relationships.

(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the commission with their HUB Report or legislative appropriations request identifying the progress and testimonials of mentors and Proteges that participate in the agency's Program. In accordance with §111.26 of this title (relating to HUB Coordinator Responsibilities) the agency's HUB Coordinator shall facilitate compliance by its agency.

(k) Each state agency that sponsors a Mentor Protege Program must report that information to the commission upon completion of a signed agreement by both parties. Information regarding the Mentor Protege Agreement shall be reported to the commission in a form prescribed by the commission within 21 calendar days after the agreement has been signed. The commission will register that agreement on the approved list of mentors and Proteges. Approved Mentor Protege Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the Protege as identified in the HUB subcontracting plan.

(l) The commission shall maintain and make available to state agencies all registered Mentor Protege Agreements. The sponsoring agency shall monitor and report the termination of an existing Mentor Protege Agreement that has been registered with the commission within 21 calendar days.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2002.

TRD-200202413
Juliet King
Legal Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-3960

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CHAPTER 113. CENTRAL PURCHASING DIVISION

SUBCHAPTER A. PURCHASING

1 TAC §113.21

The Texas Building and Procurement Commission adopts new Title 1, T.A.C., §113.21, concerning Reverse Auction without changes to the proposed text published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1956). The text of the new rule will not be republished.

The new §113.21 is adopted in accordance with Texas Government Code, §2155.062 (amended by Senate Bill 221 and §7.01, Senate Bill 311, (77th Legislature, 2001) which added the reverse auction procedure to the Commission's purchasing methods.

Internet real time reverse auction will allow for continuous bids in a specified period of time until the lowest bid is reached. It is anticipated that the new Reverse Auction rule will reduce costs in purchasing.

No comments have been received concerning the adoption of new Title 1, T.A.C., §113.21.

The new rule is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2155.062 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Juliet King
Legal Counsel
Texas Building and Procurement Commission
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CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §§126.1 - 126.5

The Texas Building and Procurement Commission adopts the repeal of old Title 1, T.A.C., Chapter 126, Subchapter A, §§126.1 - 126.5 concerning the State Surplus and Salvage Property. The repealed rules are adopted without changes to the proposed text that was published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1956) and the text will not be republished. The adoption of the repeal of old Title 1, T.A.C., Chapter 126 is being published simultaneously with the adoption of new Title 1, T.A.C., Chapter 126 in this publication of the *Texas Register*.

The adopted repeal of old Title 1, T.A.C., Chapter 126 will allow for the adoption of new and more efficient rules that are compliant with new requirements pursuant to Texas Government Code, Chapter 126, Subchapter A, B, C, and D (amended by Article 11, S.B. 311, H.B. 834, H.B. 936 and S.B. 1438, 77th Leg.).

The adopted repeal of old Title 1, T.A.C., Chapter 126 will delete obsolete language and requirements.

No comments have been received concerning the repeal of old Title 1, T.A.C., Chapter 126.

The repeal of old Title 1, T.A.C., Chapter 126, §§126.1 - 126.5 is being adopted under the authority of the Texas Government Code, §§2152.003 and 2175.001 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-3960

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1 TAC §§126.1 - 126.6

The Texas Building and Procurement Commission adopts new Title 1, T.A.C., Chapter 126, Subchapter A, §§126.1 - 126.6 concerning the State Surplus and Salvage Property. The new rules are adopted without changes to the proposed text that was published in the March 15, 2002 issue of the *Texas Register* (27 TexReg 1957) and the text will not be republished. The adoption of these new rules is being published simultaneously with the adoption of the repeal of old Title 1, T.A.C., Chapter 126 in this publication of the *Texas Register*.

The new rules are adopted in accordance with new requirements pursuant to the Texas Government Code, Chapter 2175, Subchapters A, B, C, and D (amended by Article 11, S.B. 311, H.B. 834, H.B. 936 and S.B. 1438, 77th Leg.). The new rules establish the criteria for determining that a delegation of authority to a state agency results in cost savings to the state; amend the definition for "assistance organization" to include nonprofit organizations; establish guidelines for determining the method of sale (competitive bid, auction or direct sale) most advantageous to the state; and allow for direct sale to the public in order to maximize the resale value of surplus or salvage property to the state.

The new rules will replace obsolete language found in the adopted repeal of old Title 1, T.A.C., Chapter 126 - State Surplus and Salvage Property. It is anticipated that the new rules will increase cost savings to the state and develop guidelines for the more efficient disposal of surplus and salvage property.

No comments have been received concerning the adoption of new Title 1, T.A.C., Chapter 126, §§126.1 - 126.6.

The new rules are adopted under the authority of the Texas Government Code, §§2152.003, 2175.001, 2175.061, 2175.065, 2175.129, and 2175.130 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.58

The Railroad Commission of Texas adopts amendments to §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports, with one minor change to the proposal published in the January 25, 2002, issue of the *Texas Register* (27 TexReg 547). The amendments conform §3.58 to revisions in Commission form P-4 (certificate of compliance and transportation authority) and to provisions of Texas Natural Resources Code, §89.002(a)(2) and §89.011(b). The amendments also clarify current Commission requirements and procedures.

The Commission simultaneously adopts the review and readoption of §3.58, as amended, in accordance with Texas Government Code, §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*). The agency's reasons for adopting the rule continue to exist. The notice of adopted review has been filed with the *Texas Register* concurrently with the adoption of the amendments to §3.58.

The Commission received one comment on the proposed amendments from an association, the Texas Oil and Gas Association (TXOGA).

TXOGA's comment raises three points. The first point is that proposed amendments to subsection (a)(1) would prohibit transporters from moving oil or gas from a property until after the Commission has approved a form P-4. TXOGA expressed concern that this might preclude district office authorization of the movement of liquid hydrocarbons from new properties prior to form P-4 approval and alter Commission practice of allowing production of gas into a pipeline during initial testing for up to 30 days prior to form P-4 approval.

With regard to TXOGA's first point, the Commission notes that the amendments to subsection (a)(1) to which TXOGA refers make no substantive change in the existing rule, which provides that, when approved, a form P-4 shall authorize a transporter to transport oil, gas, or geothermal resources from a property. The amendments to subsection (a)(1) are not intended to preclude a grant of temporary authority by the appropriate district office or the Austin office for the movement of liquid hydrocarbons from new properties prior to form P-4 approval or to alter Commission practice of allowing production of gas into a pipeline during initial testing of a well prior to form P-4 approval. However, the Commission agrees that clarification is necessary, and has adopted a change to subsection (a)(1) to address TXOGA's concern. This change adds the wording "except as otherwise authorized by the Commission" to appropriately qualify the provision that a transporter shall not transport oil, gas, or geothermal resources from a property until the Commission has approved the form P-4.

The second point raised by TXOGA expressed the concern that the instructions to revised form P-4 may require that the form be signed by an officer or director of the organization filing the form, in that the instructions require signing by a duly authorized individual in accordance with Statewide Rule 1. The Commission disagrees that any changes to the rule as proposed are required to address this concern. Statewide Rule 1 (16 T.A.C. §3.1) provides that a form P-5 Organization Report shall contain 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. Neither the proposed amendments to §3.58 nor the instructions to revised form P-4 change current Commission practice pertaining to the authorized individuals who may sign form P-4.

The third point raised by TXOGA expressed the concern that proposed subsection (d)(3)(A)-(C) pertaining to standards for administrative approval of requests to consolidate two or more oil leases is unnecessary and may limit the ability of Commission staff to grant administrative approval. The Commission disagrees with this comment and declines to make the changes suggested by TXOGA. TXOGA is correct that the standards of proposed subsection (d)(3)(A)-(C), regardless of whether specifically set forth in the rule, are subject to being considered as part of the required determination of whether approval of the requested consolidation will cause waste, harm correlative rights, or result in the circumvention of Commission rules. However, the Commission finds that the standards of subsection (d)(3)(A)-(C) are necessary to assure that correlative rights are protected in lease consolidation. Stating the standards in the rule assures that both the regulated industry, other affected persons, and the public know the basis on which the Commission makes these determinations.

Under 16 T.A.C. §3.26 (commonly referred to as Statewide Rule 26), surface commingling of oil from two or more tracts of land producing from the same Commission designated reservoir or from one or more tracts of land producing from different Commission designated reservoirs may be accomplished only with the approval of the Commission. Consolidation of two or more separate oil leases may allow production of oil from the constituent tracts into a single tank battery, raising issues as to the method of allocating production to ensure the protection of correlative rights of differing owners of working interests and royalty interests in the separate tracts which are consolidated. The proposed amendments to §3.58(d)(3)(A)-(C) are necessary and appropriate to ensure that consolidations of oil leases do not receive administrative approval unless the correlative rights of mineral and royalty owners are adequately protected. These rights are protected, no hearing is necessary, and administrative approval of a consolidation is appropriate when any one of the circumstances set forth in §3.58(d)(3) exist: ownership of the leases is identical in all respects; the operator has obtained a surface commingling exception permit pursuant to Statewide Rule 26; *or* the operator has filed and obtained approval of form P-12 (certificate of pooling authority) authorizing pooling of all of the leases proposed for consolidation.

The Commission adopts the amendments to §3.58 pursuant to Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.201, 85.202, 86.041, 86.042, 91.101, 141.011, and 141.012 which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil, gas or geothermal resource wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.059, 85.060, 85.161-85.163, 85.201, 85.202, 86.041, 86.042, 89.002, 89.011(b), 91.101, 141.011, and 141.012 are affected by the proposed amendments.

Issued in Austin, Texas on April 22,2002.

§3.58. Oil, Gas, or Geothermal Resource Operator's Reports.

(a) Certificate of Compliance and transportation authority.

(1) Each operator who seeks to operate wells related to crude oil, natural gas, or geothermal resources shall file with the commission's Austin office a commission form P-4 (certificate of compliance and transportation authority) for each property on which the wells are located certifying that the operator has complied with the conservation laws and the oil, gas, and geothermal resources conservation orders, rules, and regulations of the commission in respect to the property. The Commission form P-4 establishes the operator of an oil lease, gas well, or other well; certifies responsibility for regulatory compliance, including plugging wells in accordance with §3.14 of this title (relating to plugging); and identifies gatherers, purchasers, and purchasers' commission-assigned system codes authorized for each well or lease. Operators shall file form P-4 for new oil leases, gas wells, or other wells; recompletions; reclassifications of wells from oil to gas or gas to oil; consolidation, unitization or subdivision of oil leases; or change of gatherer, gas purchaser, gas purchaser system code, operator, field name or lease name. When an operator files a form P-4, the oil and gas division shall review the form for completeness and accuracy. Except as otherwise authorized by the Commission, a transporter (whether the operator or someone else) shall not transport the oil, gas, or geothermal resources from such property until the Commission has approved the certificate of compliance and transportation authority. No certificate of compliance designating or changing the designation of an operator will be approved that is signed, either as transferor or transferee, by

a non-employee agent of the organization unless the organization has filed with the commission, on its organization report, the name of the non-employee agent it has authorized to sign such certificates of compliance on its behalf.

(2) An approved certificate of compliance and transportation authority shall bind the operator until another operator files a subsequent certificate and the Commission has approved the subsequent certificate and transferred the property on commission records to the subsequent operator.

(3) The appropriate district office or the Austin office may grant temporary authority for an operator to use a transporter not authorized for a particular property in order to take care of production and prevent waste. The operator shall secure such temporary authority in writing from the appropriate district office or the Austin office before the oil or condensate is moved. In an emergency situation the operator may secure such temporary authority verbally but shall notify the district office in writing within 10 days after the oil or condensate is moved. An emergency situation exists when oil or condensate must be moved off a lease because it poses an imminent threat to the public health and safety, or when the threat of waste is imminent. The operator shall also furnish copies of such authorization or notification to the regular transporter and to the temporary transporter.

(4) If an applicant wishes to assume operator status for a property, but is unable to obtain the signature of the previous operator on the certificate of compliance and transportation authority, the applicant shall file with the oil and gas division in Austin a completed form P-4 signed by a designated officer or agent of the applicant, along with an explanatory letter and legal documentation of the applicant's right to operate the property. Prior to approval of such an application, the office of the general counsel will notify the last known operator of record, if such operator's address is available, affording such operator an opportunity to protest.

(b) Monthly producer's report (oil, natural gas and geothermal resources). For each calendar month, each operator who is a producer of crude oil, natural gas or geothermal resources shall file with the commission a report for each of the operator's producing properties. Operators shall file such reports on commission form P-1 (producer's monthly report of oil wells), commission form P-2 (producer's monthly report of gas wells), or commission form GT-2 (producer's monthly report of geothermal wells). These commission forms report monthly production and disposition of oil and casinghead gas (form P-1), gas well gas and condensate (form P-2) and geothermal resources (form GT-2). On or before the last day of the month subsequent to the period of the report, the operator shall file an original and one copy of each such form, the original to be filed in the Austin office, and one copy with the transporter taking the oil, gas or geothermal resources from the property.

(c) Recovered load oil.

(1) The operator of each lease from which load oil is recovered shall file the original and one copy of commission form P-3 (authority to transport recovered load or frac oil) with the district office, and another copy with the transporter prior to running the load oil. Form P-3 requires a producer to report the quantity of recovered load or frac oil to be transported from a particular lease and to identify the transporter. The form P-3 (authority to transport recovered load or frac oil) filed by the operator shall be the authority for the transporter to run the quantity of recovered load or frac oil stated in the form.

(2) The provisions of this subsection apply only to oil that has been obtained from a source other than the lease on which it is used. "Recovered load oil or frac oil," as that term is used herein, is any oil or liquid hydrocarbons used in any operation in an oil or gas well, and which has been recovered as a merchantable product.

(d) Subdivision and consolidation of oil leases.

(1) An operator seeking to subdivide or consolidate existing oil leases shall file and obtain approval of a commission form P-4 (certificate of compliance and transportation authority) and a commission form P-6 (request for permission to subdivide or consolidate oil lease(s)). Form P-6 identifies the leases to be subdivided or consolidated as well as the resulting leases. Two plats shall be filed with form P-6, one showing the boundaries of the lease(s) before and one showing the boundaries of the lease(s) after the subdivision or consolidation.

(2) An operator seeking to subdivide an existing oil lease that it operates or to assume operatorship of fewer than all of the wells on an oil lease shall file and obtain approval of a commission form P-4 (certificate of compliance and transportation authority) and a commission form P-6 (request for permission to subdivide or consolidate oil lease(s)). A request to subdivide an oil lease may be approved administratively if the commission staff determines that approval of the request will not cause waste, harm correlative rights, or result in the circumvention of commission rules.

(3) An operator seeking to consolidate two or more existing oil leases that it operates shall file and obtain approval of a commission form P-4 (certificate of compliance and transportation authority) and a commission form P-6 (request for permission to subdivide or consolidate oil lease(s)). A request to consolidate two or more oil leases may be approved administratively if the commission staff determines that approval of the request will not cause waste, harm correlative rights, or result in the circumvention of commission rules and:

(A) the mineral and royalty ownership of the leases proposed for consolidation is identical in all respects;

(B) the operator has obtained a surface commingling exception permit pursuant to §3.26 of this title (relating to separating devices, tanks, and surface commingling of oil) that authorizes commingling of production from all of the leases proposed for consolidation ; or

(C) the operator has filed and obtained approval of a valid commission form P-12 (certificate of pooling authority) authorizing pooling of all of the leases proposed for consolidation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2002.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

CHAPTER 7. GAS UTILITIES DIVISION

The Railroad Commission of Texas simultaneously adopts the repeal of §7.44, relating to Filing of Tariffs without changes, and adopts new §7.315, relating to Filing of Tariffs, with changes to the version published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9481). The Commission adopts

these actions to clarify the substantive requirements for tariff filings, to require that tariffs be filed electronically, and to position the rule in a new numbering and organizational scheme for Chapter 7. New §7.315 will be in new subchapter C to be entitled Records and Reports; Tariffs; Gas Utility Tax.

New §7.315(a) is the same as current §7.44(a), but adds the new requirement that all tariffs be filed electronically using a format prescribed by the Commission. New subsection (b) is substantially the same as current §7.44(b), but with some minor wording changes for clarification. New subsection (c) changes the existing language in §7.44(c) to describe in greater detail the information that a utility must include in all tariff filings; new subsection (d) sets out additional information that utilities must file for specific types of tariffs. New subsection (e) describes the process by which the Commission's Gas Services Division ensures compliance with the rule. New subsection (f) establishes a deadline for utilities to file current tariffs in electronic format, and offers a limited good cause extension.

As the Commission stated in the proposal preamble for these rules, in the long term, having utility tariffs in electronic format will be less costly for the Commission staff to handle, review, store, and retrieve. In the short term, however, the staff will likely devote extra time to answering questions and guiding utilities through the initial electronic filing process. These additional tasks will be temporary and the Commission will handle them within the current budget and staffing for the Gas Services Division.

The public will benefit from the new rule which clearly states the information a utility is required to include in a tariff filing. In addition, having tariffs in electronic format should make it easier to locate specific tariffs or tariff provisions and, ultimately, to provide access to the public through the Commission's web site.

The Commission believes that there are few, if any, utilities that are completely without any computerized operations. The initial filing is likely to be the most time-consuming; once that filing has been made, however, subsequent tariff filings should be made fairly quickly and perhaps at a savings (for postage, if for nothing else) for a gas utility.

The Commission received 19 comments on proposed new §7.315. The following six groups or associations filed comments: Consumers Union, Texas Ratepayers Organization to Save Energy, and Texas Legal Services Center, which filed jointly and are referred to as Consumers Union, *et al*., generally favored adoption of proposed new §7.315; Texas Oil and Gas Association (TxOGA) generally opposed the proposed new rule; Association of Texas Intrastate Natural Gas Pipelines (ATIP) generally favored proposed new §7.315; and HealthShare/Texas Hospital Association (HealthShare) favored adoption of the proposal. The Commission also received comments from TXU Gas Distribution, TXU Lone Star Pipeline, and TXU Fuel Company jointly (TXU); Wagner & Brown, Ltd. (Wagner); Fowler Energy (Fowler); El Paso Field Services (EPFS); Texas Genco (Genco); Tractebel North America, Inc. (Tractebel); Clark, Thomas & Winters (Clark, Thomas); Vantex Gas Pipeline Company (Vantex); Paisano Transmission Company (Paisano); Huntsman Corporation (Huntsman); and the Texas General Land Office (GLO). In the following paragraphs, the Commission has grouped the comments according to subject matter for ease of discussion.

The first group of comments addressed concerns the general requirement to file electronically or in the specified format.

ATIP supported the proposal to provide for electronic filing of tariffs. TxOGA opposed the repeal of §7.44 and adoption of new §7.315. TxOGA's members account for approximately 92% of the oil and natural gas production and 95% of refining capacity in Texas, and represent the perspectives of producers, transporters, and consumers of natural gas. However, TxOGA's comment also generally supported the comments of ATIP, which generally favored the proposed new rule.

Paisano opposed the required electronic filing because the requirement would impose a hardship on the company. Vantex stated that the rule should allow a choice of filing electronically or by mail, and stated its preference for filing by mail. The Commission noted in the proposal preamble that very few utilities are completely without computerized operations, but Paisano apparently is and Vantex might be in that group. However, because the Commission must provide more services (for example, giving Texas citizens electronic access to information) with the same number of employees and the same budget each year, it must be as efficient as possible. Requiring gas utilities to file their tariffs electronically is one way for the Commission to achieve this. The Commission has determined that it is reasonable to expect those few utilities that may be completely without computer capabilities to hire a service to prepare the necessary filings. In addition, the Commission staff will be able to provide reasonable assistance to smaller utilities as it has traditionally done in the past with respect to paper tariff filings.

EPFS supported the Commission's efforts to develop electronic standards for filing tariffs, which should increase efficiency for both the Commission and gas utilities. While EPFS supported electronic filing, it stated there are additional changes in the proposed rule that would result in increased costs and less efficient operations for gas utilities in Texas. The Commission agrees with EPFS' comments on efficiency and addresses EPFS's suggested changes elsewhere in the preamble.

Clark, Thomas urged careful consideration by the Commission on the electronic filing requirement. The Commission points out that the proposal has been under consideration and planning for more than two years, and that the filing protocols have been crafted with the assistance of several of the utilities that file large numbers of tariffs each year.

The second group of comments concerns public access to and security of electronically-filed information generally. Consumers Union, *et al.* supported the proposal and suggested that, in addition to the language as proposed, the rule should clearly state that the information would be made available to the public through the Commission's web site, in the same manner that the Commission provides other information such as permits for oil and gas wells, certain reports, oil and gas fields, and production. The proposed rule would require electronic filing of information useful to consumers such as gas utility rates, charges related to deposits, line extension polices, meter testing, returned check, connection and reconnection, as well as customer service rules.

Consumers Union, *et al.* suggested the rule should clearly state that the information would be made available to the public on the Commission's web site. Through electronic filing, the Commission will provide a single point of access to consumers by providing rate and service information in an easily accessible, electronic form. Consumers Union, *et al.* also stated that the proposed rule would save taxpayers' money by streamlining procedures at the agency, making the handling of tariffs more efficient and improving service to the public who calls with questions or complaints about service. Consumers Union, *et al.* urged the

Commission to make this information available to the public on the Commission's web site, and urged not only that the Commission should increase the amount of information relating to gas utility rates and service that is available to consumers over the Internet but also that the Commission should take a lead role in accepting public input and educating consumers about gas utility service. Consumers Union, *et al.* observed that there are no consistent standards relating to gas utility service across the state because while state law sets a floor on customer protection rules for gas utilities, a city may impose stronger rules. Consumers Union, *et al.* has also found that the public is confused about where to go, "the city or the Commission," when they have a complaint about price or service quality. Through electronic filing, the Commission will provide a single point of access to consumers by providing rate and service information in an easily accessible, electronic form.

The Commission concurs with Consumers Union in its call for the Commission to increase the amount of information relating to gas utility rates and services available to consumers over the internet. In fact, it has been the practice of the Commission to do just that. A list of the material currently available on its website includes: gas utility rules and regulations, Gas Services Division Annual Reports, Cost of Service and Cost of Gas rate comparisons, Typical Bill Comparisons, Natural Gas Rates - Frequently Asked Questions (FAQ), Natural Gas Rate Review Handbook, and Gas Utility Docket Information. Additional material is added as it is developed and as resources allow.

Consumers Union, *et al.* also stated that the proposed rule will save taxpayers' money by streamlining procedures at the agency; electronic filing will make handling of tariffs more efficient. Consumers Union, *et al.* believes electronic filing will also improve service to members of the public who call with questions or complaints about service. The staff will be able to easily retrieve rate schedules and customer service regulations for individual municipalities. The consumers who call the state will be more satisfied taxpayers if the Commission can give them immediate answers rather than requiring them to make another phone call by referring them to the municipality with original jurisdiction.

TXU expressed concern with the transition from the existing rule and paper tariff filings to the proposed rule and electronic tariffs. While the Commission has prepared electronic filing templates, TXU understood that the Commission's tariff system is not yet ready to provide public access to the electronic information. If this is correct, TXU stated, the Commission should carefully consider how the public will access tariff information filed electronically after the adoption of the rule and before public access can be provided. TXU urged the Commission to add some instructions to the rule preamble to address this situation.

The Commission intends to provide as much information on the web site as possible, and to provide access to the tariff data from the Gas Services link from the Commission's home page of its web site. Any reference in the rule to access via the web site will necessarily be conditional, since electronic access can be hindered by many kinds of interference and unanticipated problems.

TxOGA stated that any electronic database storing the tariffs should include appropriate security measures and procedures to assure that confidential information is not inadvertently released. ATIP was also concerned with security of any electronic database and asked the Commission to consider receiving the confidential information on a separate disk and maintaining it separately from the accessible database.

Clark, Thomas suggested the Commission allow utilities to file tariffs in a read-only file format, which would ensure that the provisions of a particular tariff are not changed after being submitted to the Commission, except by the gas utility making a new tariff filing. Unless the electronic filing protocol adopted by the Commission is subject to both internal and external security tests, the Commission and gas utilities risk corruption or alteration of tariff information.

In response, the Commission notes its preference that all requirements be specified within the text of the rule itself, rather than in a preamble which is not part of the rule and therefore not easily located by those who must abide by its requirements or anyone who may be interested in knowing those requirements. To address the comments from TxOGA, ATIP, and Clark, Thomas, regarding the security of filed information, the Commission notes that all data, including customer identification information, will go into a database to which the public will not have access through the Internet. Using the database, the Commission staff will develop reports that include utilities' tariff information and make them available to the public through the Commission's web site. The Commission staff needs the tariff information filed in the specified, pipe-delimited format in order to use that information in the database and thus to manipulate it to develop the information that will be available on the web site. This procedure will protect the filed information from being altered or corrupted. The Commission's electronic filing templates are currently available.

The third group of comments expressed concern about the continued confidentiality of certain filed information because of the unreliability of security in an electronic filing process. Security of confidential information is not threatened because of electronic filing, because immediately upon receipt, the filed information is moved to a separate, secure server and database behind the Commission's firewall. Web users cannot access these files. Confidential information filed by the utilities will be filed prior to the filing of an actual rate schedule, and thereafter referenced by Commission-assigned numbers. This information is further secured through the use of a username and password selected by the person filing. In addition, the Commission has an intrusion detection system in place that would alert Commission Information Technology Services Division (ITS) staff in the event someone tried to access these data.

Genco commented that public disclosure of its identity and delivery point information would cause a disadvantage for Genco and urged the Commission to retain the existing standards of confidentiality. Huntsman also stated that the disclosure of customer and delivery point data currently kept confidential by the Commission would cause Huntsman harm and requested that this information remain confidential.

Other comments, however, were directed to, and critical of, the Commission's practice of keeping certain information confidential. For example, Fowler stated that disclosure of customer information, or at least detailed SIC code and zip code or county location, should be required for tariff customers and transportation customers, and that it should apply to existing contracts. Fowler stated that without this information, the Commission's informal complaint process is flawed. HealthShare also stated that customer information should be required and also cited the informal complaint process as a reason to require it. Most emphatic, however, were the comments filed by GLO opposing the continued confidentiality of customer identification information.

GLO stated that having the ability to negotiate just and reasonable transportation rates in a price-transparent, vigorous and open gas transportation services market is critical to the economic future of this state and particularly to the success of electric deregulation, and the Commission's adoption of this rule would greatly impact the Land Office's efforts to provide both gas and electricity to Texas schools and public retail customers at a reasonable rate. GLO generally supported the proposed rule, but offered some comments on the issue of whether eliminating the confidentiality of certain information would improve the marketplace for natural gas transactions and whether disclosing the information would cause business harm to the parties in the transportation agreements.

GLO believes the Commission should examine how the Federal Energy Regulatory Commission (FERC) dealt with these exact questions. The FERC's solutions to these questions are applicable to intra-state markets because the positive economic effects of price transparency and the benefits to the market of motivating all transporters to be the low-cost provider in their local market do not depend on whether the gas transported is for ultimate sale across state lines. The FERC required pipelines to timely disclose contract prices and delivery points for transportation and sales service in FERC Order No. 636 (Final Rule, April 8, 1992), and recognized that gas prices must be fully known and that transporters should inform interested persons about the available capacity. In February 2000, the FERC improved the reporting requirements to provide more pricing information and permit more effective monitoring of the market, and added certain new types of information to its reporting requirements, including the names of the parties to the contract; an identification number for each shipper, such as a DUNS number; the contract number for the shipper receiving service and for the releasing shipper; the rate charged under each contract and the maximum rate, if applicable; the duration of the contract; the receipt and delivery points and zones or segments covered by the contract, as well as the common transaction point codes; the contract quantity, or volumetric quantity under a volumetric release; special terms and conditions applicable to a capacity release and special details pertaining to a pipeline transportation contract; and any affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. Many comments submitted by pipelines opposed the FERC's new and expanded transaction disclosure requirements, and many of the same arguments have been raised in the Commission's proposed new §7.315, including confidentiality. Some commenters on the FERC rule stated it would cause shippers competitive harm. GLO suspects that the term "competitive harm" as used by the commenters means "competition" and that what the commenters were really concerned about is that a low-cost provider of transportation services would be able to take business away from the higher-cost providers. In responding to these concerns, the FERC found that the disclosure of the identity of the shipper in each transaction, together with the price and capacity path information on each shipper's transaction, is necessary to enable shippers and the Commission to effectively monitor for potential undue discrimination or undue preference. The FERC also determined that the transactional information must be reported at the time of the transaction for it to have any value.

GLO noted that pipelines often assert that the Commission has a "complaint-driven" oversight system for gas utilities that has served the Commission well for many decades. It cites the paucity of complaints claiming discrimination and undue preference as proof that competition for gas transportation services is strong. As most gas utility practitioners know, nothing could be further from the truth. GLO stated it is virtually impossible to find a transporter in the state who will transport gas without a commitment to keep the terms of the agreement, such as the shipper's identity and the delivery and receipt points, confidential. GLO also stated that, according to some intra-state pipelines, the Texas Public Information Act prohibits the Commission from disclosing or requiring transporters to disclose customer names and the locations of delivery points. However, the Legislature has given the Commission clear authority to require the reporting of the identity of shippers and delivery points, in Texas Utilities Code, §102.101(b); to require a gas utility to publish, in electronic format, any data related to the furnishing of transportation services, in Texas Utilities Code, §104.252(1); and to treat shipper and delivery point information as confidential, even though transporters have no vested right in the continuation of that practice, in Texas Utilities Code, §104.253.

GLO also noted that the Commission's new charge from the Legislature, in Senate Bill 7 (regarding electric deregulation; 76th Legislature [1999]), includes keeping the costs of fuel, such as natural gas, used for generating electricity low. Texas Utilities Code, §39.9048 (Vernon 1999). GLO stated that assuring that the gas transportation market is truly competitive is to promote price transparency.

To facilitate as much as possible a competitive market for natural gas, the proposal preamble solicited comments from interested parties regarding the desirability of public disclosure of the customer and delivery point information that is currently kept confidential. Specifically, the Commission requested comments on whether eliminating the confidentiality of certain information would improve the marketplace for natural gas transactions and whether disclosing the information would cause business harm to the parties in the transportation agreements. The rule as proposed, however, would not have resulted in the Commission making public any information that previously it had kept confidential. As proposed, the rule would have discontinued the filing of customer identity information and substituted the filing of just a description of the type of customer for which the utility is providing transportation service; that description of the type of customer would not have been confidential. Because of the number of comments the Commission received on the issue of confidentiality of certain information, its impact on the competitiveness of the gas market, and the widely divergent positions of the comments, the Commission declines to adopt the wording proposed for subsection (d)(2)(B) and will retain the current practice with respect to the filing of delivery point information and maintaining the confidentiality of that information; however, information about customer type will no longer be required.

The fourth area of comments addressed the amount of detail requested by the Commission or the specific requirements of particular subdivisions of proposed new §7.315.

ATIP noted that the additional explanations required by the proposed rule would result in a tariff that resembles a contract. Many of the provisions of the contract would be repeated in the tariff, resulting in a tariff far lengthier and more complicated than anything previously filed. ATIP also argued that some information that may be required would have little to do with rate issues, such as liquidated damage provisions. ATIP was not aware of any public demand for additional reporting data or any public need that would be met by amassing additional reporting data, and questioned whether this was necessary. The Commission points out

that the rule requires only a list of the services provided under the contract, not a reproduction of the contract itself, regardless of whether each service provided has a separate rate component. The Commission requires the information not because of public demand--indeed, it is not likely that members of the public even know that the Commission has this type of information on file--but because the Commission's auditors and rate analysts need it to perform full and fair audits and rate analyses.

The fifth area of comments concerned the need to clarify rule requirements and/or to reconcile rule requirements with the electronic templates.

TXU urged the Commission to consider a fuller revision of the rule that would better match the electronic filing formats and eliminate unnecessary information requirements. Section 7.44 has remained unchanged since 1987, a time prior to the significant changes in the industry created by deregulation of interstate pipelines and the development of a robust transportation business. TXU stated the rule is difficult to follow in determining what information is needed for a particular type of tariff or rate schedule and is unclear concerning what services fall under the different content requirements. TXU suggested that the Commission's two templates for electronic rate schedules (GSD-1 and GSD-2), as well as 10 other templates for service charges, etc., be more clearly discussed in the rule, and provided some draft revisions toward this end. The Commission agrees that the proposed new rule, particularly the electronic filing requirement, is a significant change to the current practice, and recognizes that the rule will almost certainly require future amendments as the program matures. The Commission also agrees that the templates need further explanation and has clarified the wording in subsection (a), subsection (c)(5) and (6), and subsection (d)(1) and (2) to specify the uses of each template.

EPFS stated that the rule should recognize the many differing characteristics of gas utilities and encouraged the Commission to retain standards that facilitate the automation of tariff filings and to not impose additional unnecessary requirements. EPFS recognized that automated tariff filings reduce administrative costs and allow gas utilities to ensure greater compliance with regulations. The Commission agrees that the rule increases the efficient operation of the agency by reducing administrative costs and standardizing the way tariffs are filed.

The remaining comments addressed specific portions of the rule, the terminology used, etc.

TXU suggested using the terms "tariff" and "rate schedule" consistently in the rule. In some sections of the rule, the term "tariff" is used to refer to the entire set of rates filed by a gas utility, while in other sections, the term "tariff" refers to a single rate. The term "rate schedule" is used both ways also. TXU suggested that "tariff" be used to refer to the complete set of all rates filed by a gas utility and that "rate schedule" be used to refer to a single rate description. If adopted, each utility would be required to file a tariff consisting of all rate schedules of the gas utility. The Commission recognizes the logic of the suggested distinction, but because the proposed language is virtually identical to that of current §7.44, which is understood by those who must comply with the rule, the Commission declines to make this change now. The consistency in use of terms is, however, a matter worthy of further evaluation and discussion, and the Commission will likely revisit it in a future rulemaking proceeding.

EPFS supported the requirement to automate all tariff filings, but stated that conforming to the electronic format prescribed by the Commission may be difficult for some gas utilities. The Commission has currently proposed a "pipe-delimited" format, which, according to EPFS, is not supported by many computer software programs, including Microsoft Excel. Accordingly, customized programming may be required to conform to the Commission's standard, which can be costly and time consuming. EPFS urged that the Commission adopt formats that are widely available and compatible with popular software programs, such as a tab-delimited format or space-delimited format, particularly as the computer industry continues to progress. Otherwise, unnecessary costs and resources will be utilized to comply with outdated format requirements. The Commission disagrees with EPFS that the pipe-delimited format is incompatible with Microsoft Excel; it is compatible with that program, although users may find it easier to use in Notepad or Wordpad. The tab-delimited and space-delimited formats are not options for this type of filing.

Clark, Thomas suggested that gas utilities be allowed to file tariffs using a read-only file format, preferably .pdf. This type of electronic filing would eliminate a number of objections and concerns that the industry has relative to the proposed rule but would still allow the Commission to make its handling of tariffs more efficient. A read-only file format would also ensure that the provisions of a particular tariff are not changed after being submitted to the Commission, except by the gas utility making a new tariff filing. A read-only file format would also allow those gas utilities that file tariffs at both the Commission and at cities to avoid maintaining more than one set of tariffs in the likely event that a city or cities do not adopt the same electronic tariff filing protocol prescribed by the Commission. In many instances, a city approves a specific non-electronic tariff that relates to natural gas service subject to its original jurisdiction. Pursuant to the Commission's current tariff filing rule, a copy of the city-approved tariff is then filed with the Commission. Under the proposed rule, that city-approved tariff would be required to be filed in the electronic format prescribed by the Commission without regard to whether such format adequately allows for the inclusion of all of the tariff provisions approved by the city.

In response, the Commission reiterates its earlier statement that all data will go into a database to which the public will not have access through the Internet. Using the database, the Commission staff will develop reports that include utilities' tariff information and make the reports available to the public through the Commission's web site. The Commission staff needs the tariff information filed in the specified, pipe-delimited format in order to use that information in the database and thus to manipulate it to develop the information that will be available on the web site in .pdf or HTML format.

Both ATIP and EPFS questioned the requirement in subsection (c)(3) for the company's contract number and noted the Commission should permit the gas utility to request confidentiality of such number. The Commission responds that contract numbers are not currently confidential. In addition, if there are provisions that apply to many rate schedules, that information may be filed once and cross-referenced. In the alternative, utilities can assign dummy numbers with their own cross-references. Having the contract number, a unique identifier, is important for the Commission's auditors and rate analysts.

With respect to subsection (c)(4), ATIP questioned how to describe a particular service, such as a movement of gas from Point A to Point B, which may include movement over a gathering line requiring compression, through a plant requiring processing and treating, and through a transmission line which may or may

not include additional stages of compression. Describing all of those activities would make the tariff as involved as the contract, if not more so. ATIP recommended that the Commission clearly describe what information is necessary and that further discussion of the Commission's requirements should occur prior to the adoption of the rule. The Commission requires only a list of all the services provided, whether these are broken out separately for rate purposes or not. The Commission does not want a reproduction or even a summary of the contract itself.

EPFS noted that proposed subsection (c)(4) includes some services that are not required under current §7.44. EPFS requested that the Commission continue to permit flexibility in denoting the type of service provided, rather than narrowing the service to specific categories in the rule. EPFS stated that a gas utility is often unaware of buyer's purpose for purchasing the gas, and the type of service may change as the gas industry continues to evolve, so the Commission and gas utility should retain the maximum amount of flexibility under the rule. EPFS also requested that the Commission clarify that a single tariff is only necessary when such rates are charged and that a single type of service, such as gathering, will sufficiently cover all charges incurred under a gathering agreement. To increase the level of detail would result in increased costs to gas utilities, particularly those that negotiate transactions under Texas Utilities Code, §104.003(b) and have automated tariff-filing systems. TxOGA also recommended that the Commission clarify the level of detail and the extent of description necessary for the type of service the utility provides under the tariff. The Commission suggests that for services that are bundled into a single rate, the utility should list the services separately; there is no requirement that each service list a separate rate. The Commission has clarified the wording in subsection (c)(4) but has retained the word "other" to capture everything not listed and to provide maximum flexibility.

TXU stated the Commission should delete the requirement for the original contract date found in subsection (c)(5) and the date of current amendment found in subsection (c)(6) because there is no apparent need for this information in informing the public of a particular rate or in enforcing any regulatory requirement. TXU noted there would be no contract or agreement for residential rates, and, in the case of a rate schedule of general applicability, the original contract date would be different for every customer served under the rate schedule. Filing such information under a generally applicable rate would be confusing and would require multiple revisions of the rate schedule. Likewise, TXU questioned requiring the date of the current amendment and asked if filing a new rate schedule for all amendments, regardless of their impact on the amount paid or the service rendered, would be required. If the requirement is not deleted, then TXU recommended adding the term "if applicable." The Commission notes that although the language in proposed subsection (c)(5) and (6) was not changed from the current rule, the information required by these paragraphs is necessary for the Commission's audit and rate analysis activities. In the adopted version, the Commission has amended the wording to clarify which form to use.

With regard to TXU's statement concerning the need to file a new rate schedule for all amendments regardless of their impact on the amount paid or the service rendered, the Commission points out that this rule language is unchanged from current §7.44. Utilities should keep filing the new schedules for all required amendments or elements of the tariff. The data help the Commission's auditors and rate analysts by saving time and ensuring accuracy.

There were many comments criticizing the level of detail required by the provisions of subsection (c)(7). ATIP commented the provisions of this subsection appear to require a listing of all possible monetary events under a contract, whether those actually occur or not. Describing all the contingencies a contract might provide will result in a tariff not much briefer than the contract itself. Tractebel commented that subsection (c)(7) adds more requirements to disclose all components of the current rate than current §7.44 language requires. In some cases, requiring the utility to provide more detail about the prevailing rate would not provide more useful information to the marketplace, and could impair a utility's generation affiliate's ability to compete. Tractebel recommended the Commission leave intact the current text requiring a utility to list all components used to calculate the rate.

EPFS also noted that proposed subsection (c)(7) has been expanded to include major components of a contract that would be difficult to duplicate on a tariff form without essentially reiterating the major provisions of the contract. Taxes, imbalance provisions, and penalties, for example, may be charged if certain triggering events occur. TXU stated these provisions should not be required on a tariff filing because they are not standard components of the rates charged for services. Gas utilities that negotiate transactions under Texas Utilities Code, §104.003(b), as EPFS does, would be required to devote additional staffing resources to review each tariff and contract to ensure compliance with the new regulation.

TXU recommended the Commission clarify subsection (c)(7) to eliminate any interpretation that complete contract language needs to be included in the tariff. Balancing provisions can easily take two or three pages of a contract and treating or tax provisions could be almost a page in length. Because the electronic filing format contemplates all of this information being entered into one area of the electronic template, it will not be possible to provide currently available rate information without divulging the confidential information. Additionally, the inclusion of so much detail will significantly increase the amount of Commission resources required to maintain electronic tariffs. TXU suggested that an acknowledgment on the rate schedule that a particular rate includes certain provisions without providing the full particulars of the contract language might be an appropriate compromise. Certainly the information is available to the customer through their contract and to the Commission through the files of the gas utility, but there is no significant public purpose to be achieved through the disclosure of all of the contract detail on or through the Commission's web site. TxOGA stated the tariff filing should be limited in scope and content to rate information and should not include contractual information, such as balancing provisions or payment provisions.

In response to the comments regarding the requirements of subsection (c)(7), the Commission points out that only a list of the services provided or the penalty provisions that might be invoked are required to be listed; these are as much a part of a "rate" as the cost per unit for transportation services. For example, there is no requirement to explain all of the contingencies that might trigger the application of a penalty provision, only an entry such as "penalty for imbalances." That a term or condition might not be "standard" is no reason to omit it; to the contrary, such information is useful to the Commission and the public. The Commission specifically disagrees that subsection (c)(7) requires inclusion of the full contract language. In fact, TXU's suggested compromise is what the Commission intends to be required, and the Commission has amended the wording of subsection (c)(7) to clarify the requirement.

ATIP commented that proposed subsection (c)(8) might be viewed as including such things as an obligation to pay for the remaining costs of facilities built to provide service to a particular customer if that customer fails to transport sufficient volumes. Long-term arrangements are common in which a transporter would build or enlarge facilities for a customer and, in turn, the customer may be obligated to transport some minimum volume of gas so that the transporter's additional investment is worthwhile. If the customer fails to meet that obligation, additional cash payments or requirements may occur. ATIP did not believe it would be necessary or useful to repeat those provisions in a tariff. ATIP also questioned whether the new electronic tariff form will accommodate a large amount of information, stating that the form accepts only 10 lines of data in both the current rate components and rate adjustment provisions. A detailed explanation of all the contingency charges in a contract as well as a description of imbalance provision would require more than 10 lines of data.

The Commission agrees that proposed subsection (c)(8) does, in fact, require that the utility include listing an obligation to pay for the remaining costs of facilities built to provide service to a particular customer if that customer fails to transport sufficient volumes; this minimum take information is clearly part of the rate. The Commission notes that while a utility may set a rate, rate information in and of itself is not inherently confidential. Regarding ATIP's comment that this information would not be necessary or useful to include in a tariff, the Commission disagrees and points out that this is the type of information that will inform both customers and members of the public of the events that influence the rates they ultimately pay for gas utility service. With respect to ATIP's criticism of a detailed explanation of all contingency charges, the Commission notes that the rule does not say "detailed," but in any event, the electronic filing forms will hold much more than 10 lines of data. Any hard copy or paper version of the form that might have been made available to utilities to comment on was printed using a 10-line field, but the "form" will expand to hold much more than 10 lines of data.

TXU stated that the requirement of subsection (c)(9)(D) should be revised to require only a statement that the tariff filing amends an existing tariff. Requiring an explanation of the amendment would duplicate information already provided in the tariff under subsection (c)(7) or (8). The Commission agrees and has clarified the wording in subsection (c)(9)(D) by deleting the phrase "in which case the filing shall include an explanation of the amendment."

TXU stated that the information for a contact person required by subsection (c)(10) is not needed on every rate schedule and suggested that this requirement be moved to subsection (a) and should clearly state that the Gas Services Division's assigned company contact number be required on all tariffs or rate schedules. TXU believes this would be consistent with the electronic filing format. The Commission disagrees. The company contact information is filed only once on the electronic filing forms and then is cross-referenced. However, because rate schedules are developed and filed by different people within a utility organization, it is necessary to identify the person or persons who can discuss the schedule knowledgeably. This information is crucial for the Commission's auditors and rate analysts. The information can still be filed once and cross- referenced to every rate schedule to which it applies.

The comments on proposed §7.315(d) were many and detailed; however, they also revealed that the commenters did not understand the way in which the proposal was different from the current requirements and was intended to require filing less, rather than more, information that has traditionally been kept confidential.

TXU recommended the Commission revise the descriptions of services in subsections (d)(1), (2), and (3) to match the electronic filing templates. These three sections previously coincided with the original three forms of the Commission, which are being replaced with two forms (GSD-1 and GSD-2). TXU stated it is difficult to determine what services are covered by the requirements of each section. Because there are now only two electronic filing templates, TXU recommended the rule be revised to include only two sections and to clarify which electronic template covers each section or service. The Commission agrees in part and has added language to subsection (d)(1), (2), and (3) to indicate which of the two forms should be filed in each of the three situations. This should help clarify that there are three types of service and two templates.

TXU recommended the Commission clarify subsection (d)(1)(B) and (C) which require descriptions of service charges, but use different words to describe the information required to be filed. TXU stated the Commission should ensure that it uses language consistently throughout the rule and suggested that the Commission require the rate schedule to include, in one section, all jurisdictional service charges and a description of each service charge in sufficient detail to enable customers to determine the applicability of each service charge. This would eliminate the need for both sections. TXU also recommended the Commission eliminate subsection (d)(1)(D) because the information on rules and regulations is already required to be included by all distribution utilities in their tariffs under subsection (a) of the rule, and that the customer name requirement in subsection (d)(2)(A) is not needed because it is already required in subsection (c)(2) in all rate schedules. The Commission agrees that subsection (d)(1)(D) is duplicative and should be deleted; in addition, subsection (d)(1)(B) and (C) have been combined and the wording clarified. However, with regard to TXU's comment on subsection (d)(2)(A), the Commission disagrees and finds that this information is needed because the Commission will organize the information by type of service. Under the proposal, the Commission intended to collect less confidential information, expected that the description of the type of service would be more helpful to shippers, and would have done away with the practice of collecting information that could be more customer- specific. However, because the Commission received comments both in favor of and opposed to the proposal, the Commission declines to adopt this procedure and has reinstated the existing requirements for this type of tariff filing.

EPFS noted that subsection (d)(2)(B) changed the filing requirements to include a description of the delivery point, which is not currently required under the Commission's rules. Currently, the Commission assigns a confidential delivery point number to each delivery point, and the gas utility files tariffs using the contracted delivery point numbers. Under the proposed wording, gas utilities would be required to include a delivery point description, rather than the actual delivery point numbers. Filing a type of the delivery point would not be an accurate reflection of the contractual agreement. In addition, modifying the tariff filing requirements would require additional hours of programming for gas utilities that utilize a customized automated system to generate tariff filings. Moreover, EPFS stated delivery point information

should remain confidential as is permitted today by the Commission because such information is commercially sensitive to gas utilities that negotiate transactions under Texas Utilities Code, §104.003(b). EPFS suggests the Commission retain the current standards, which require a Commission-assigned delivery point number, rather than a publicly available description of the type of delivery point. The current and proposed rules require gas utilities to file tariffs with delivery point information. Since some services, such as gathering, have rates that are based on the receipt point, the Commission should permit the filing of receipt or delivery point information, depending upon whether the rate is charged on receipts or deliveries.

The Commission notes that currently the delivery point information is coded and confidential with regard to the physical location. Under the proposed rule, the delivery point information would not have identified the physical location and therefore would not have been kept confidential. However, because of the number of comments the Commission received on the issue of confidentiality of certain information, its impact on the competitiveness of the gas market, and the widely divergent positions of the comments, the Commission declines to adopt its proposed wording of subsection (d)(2) and will retain the current practice with respect to the filing of delivery point information and maintaining the confidentiality of that information. Customer type information will no longer be reported. The Commission also notes that the electronic filing format will permit the utility to file information for either receipt point or delivery point. The Commission agrees that subsection (d)(2) should be clarified, and as previously stated, has added a reference to the form GSD-2.

Wagner opposed the adoption of §7.315 as proposed, and commented that §7.315(d)(2)(B) and (d)(3)(B) would implement significant changes in the Commission's public disclosure policy by eliminating the opportunity for utilities to file a confidential customer identification number in place of information concerning "contractual point(s) of redelivery" as allowed under existing §7.44. Wagner stated this change in policy could harm both shippers and transporters whose existing transportation agreements are governed by binding non-disclosure provisions. Further, because many existing transportation agreements have been executed with the understanding that certain information will be handled confidentially, Wagner believed parties whose contracts do not include non-disclosure provisions could also be significantly harmed. In addition, Wagner stated the explanation for proposed §7.315 constituted insufficient notice by failing to adequately describe the significance of the change proposed in §7.315(d). If it is the Commission's desire to change its public disclosure policy, Wagner stated the Commission must repropose the rule and clearly state its intention in the notice.

The Commission responds by pointing out that currently, delivery point information, *i.e.*, the physical location, is coded and kept confidential. Under the proposed rule, delivery point information would not have included the physical location and would not have been kept confidential; instead, delivery point information would be limited to the type of service provided by the utility, and was intended to more helpful to shippers without collecting information that could be more customer-specific. The Commission observes that reducing the amount of confidential information it gathers, keeps, and manages would appear to be less significant than asking for more. Other commenters (*e.g.*, Fowler, HealthShare, and GLO) were opposed to continuing the practice of keeping any kind of information about utility service confidential. Therefore the Commission has decided to retain its current practice with respect to delivery point information; however, information about customer type will no longer be reported.

TXU commented that the requirement in subsection (d)(3)(A) should be eliminated. The language requires the expiration date to be stated in the rate schedule, but the electronic formats do not have a provision for the expiration date. TXU stated the usefulness of this information in a public forum is not clear, and the rule should not require information that the electronic template will not permit to be filed. The Commission agrees and has changed the wording of subsection (d)(3)(A) to use the wording on the electronic forms, which is "term of contract." The Commission notes that the usefulness of this information does not apply only to the public, but also to the Commission's auditors and rate analysts who need this information to carry out their regulatory responsibilities.

Although not part of a comment, the Commission has corrected the citations in (d)(4) and (d)(4)(A) from Texas Utilities Code §104.002(b) to §104.003(b). Also, the Commission has added in subsection (d)(4)(C) the requirement that the affirmation state that the transaction is not a direct sale for resale to a gas distribution utility at a city gate. This requirement is part of current §7.44(d)(4)(B).

ATIP stated that both utilities and customers need to know that a tariff has been accepted and is effective and recommended that the current wording in §7.44(e) be retained and the following language from the current rule inserted: "A filing is deemed accepted within 30 days from the date of the filing if no action is taken by the division." Tractebel also noted that subsection (e) deletes the previous provision that a tariff will be deemed approved 30 days after filing if no action is taken by the Division.

TXU also suggested that the Commission retain the requirement from existing §7.44 that deems a rate schedule accepted if the Gas Services Division takes no action on a rate schedule within 30 days following the filing of a rate schedule. TXU also suggested that the last two sentences of subsection (e) be eliminated. The rule sets forth the requirements for information to be made available to the Commission and the public; it does not involve a review of the justness or reasonableness of any particular rate. Therefore, the rejection of a tariff or rate schedule under §7.315 should be based on a utility's compliance with §7.315, not the justness or reasonableness of the rate itself. TXU stated it would be inappropriate to consider a rate schedule filing as a statement of intent under Texas Utilities Code, §104.102, because such a filing would not contain all of the information required for a statement of intent. Likewise, the Commission should not be able to file a complaint against a gas utility simply because the rate schedule failed to comply with this rule. The Commission is free to initiate an investigation or complaint under Texas Utilities Code, §104.151, at any time, but the proposed language implies that the Commission could establish rates in a docketed proceeding and then challenge those same rates through a complaint proceeding based on the rejection of a tariff. The rule should not be worded in a manner that would allow such an approach to be taken.

The Commission agrees with the comments of ATIP, Tractebel, and TXU regarding the reinstatement of the provision that a tariff is deemed approved if the Commission staff takes no action within 30 days of filing, and has added wording to subsection (e) to refer to the 30-day time period. The Commission notes that on its Web site, an accepted tariff is identified as "active." Tariffs that are filed but not accepted will not be shown on the Web site.

The Commission disagrees with TXU's comments that the proposed language implies that the Commission could establish rates in a docketed proceeding and then challenge those same rates through a complaint proceeding based on the rejection of a tariff; the Commission has not ever done that and, this proposal did not contemplate a change in the procedure for review and approval or rejection of compliance tariffs. The Commission's practice has been that subsequent to the entry of a final order in a rate case, the Commission staff reviews all tariffs filed to implement that order; those that do not comply with that Commission order are rejected as noncompliant. Nevertheless, the Commission has revised the rule to clarify that a tariff or rate schedule filing may be docketed when a utility files a tariff for an initial rate which on its face is not just and reasonable; files a tariff for higher environs rates based on city rates without filing a statement of intent to increase rates for the environs; files a tariff to increase a city gate rate without filing a statement of intent; or files tariffs containing provisions other than rates that have substantive service rule changes that have not been reviewed.

EPFS stated that proposed §7.315 includes many expanded provisions that would change the nature of approved tariffs on file with the Commission. Accordingly, a gas utility may be unable to comply with the requirement to refile currently approved tariffs without any substantive changes. EPFS encouraged the Commission to limit any additional requirements in the proposed rule aside from the electronic filing requirements. EPFS also stated that requiring the electronic filing of tariffs in a format required by the Commission may have a material impact on the feasibility of electronic filing and recommended the Commission continue to engage the industry in discussions regarding all future formats so the Commission can adopt formats that permit an efficient implementation of electronic filing processes. The Commission points out that submitting tariff information through the Web site makes the information secure; submittal with a diskette or through electronic mail does not. The Commission staff has had ongoing discussions with the industry for two years regarding the format and method for filing tariff information electronically, and this rule provides the most flexibility in converting a wide range of data formats to the Commission's Oracle database. Continuing the current practice of accepting any style or format for these filings does not achieve this goal. There will be a one-time cost to convert, but after that, there should be few problems and the new procedures will be better for the public as well. The Commission disagrees that a tariff that commemorates the contract would be a "substantive" change, as EPFS commented.

TXU recommended that existing subsection (f), which covers transition matters from paper filings to electronic filings, be removed from the rule and placed in the preamble. These transition provisions will have no import within one year of the adoption of the rule. Rather than embed this language permanently in the rule in a manner that would require another rule amendment in order to remove it, the Commission should simply place these transition requirements in the preamble. If it is believed that placement in the preamble is not legally binding on gas utilities, the Commission should condition the effectiveness of the section so that it becomes ineffective pursuant to its own terms after some date certain. While this latter approach would not remove the need for a future amendment, it would provide clarity on the applicability of the dates in the future.

The Commission disagrees with TXU's comments. The Commission again notes that requirements that are not in the rule language itself are difficult to find and may be unenforceable. In addition, information in preambles is not as readily available to the public after a rule is adopted, although it is available through the *Texas Register* online. Because this provision will become ineffective by its own terms, the Commission finds it preferable to retain the provision as part of the rule rather than simply including it in the adoption preamble. A rulemaking proceeding to delete obsolete language would be neither difficult nor time-consuming.

TXU also recommended adding a new subsection (f) to state when a rate schedule is deemed filed. Because the rule requires tariffs and rate schedules to be filed within 30 days of their effective date, it is important to know when a rate schedule will be considered filed. TXU understood that the Commission's system is designed to automatically send an electronic confirmation of receipt of a gas utility's tariff filing; if this is correct, this procedure should be covered in the rule. If this is incorrect, TXU suggested that electronic filings be considered filed upon their transmittal by the sender. The rule does not indicate how electronic filings will be made, *i.e*., by disk or by electronic transmittal, and the Commission's existing rules on the filing of documents do not contemplate electronic filings. Some clarification of this point is needed. The Commission agrees that this should be clarified, and has reworded subsection (f) to state that the method of filing is through the Commission's web site using the instructions contained in the Electronic Data Interchange (EDI) manual found on the Commission's web site, and that the filing date is confirmed through the date of the electronic mail confirming receipt. In addition, the Commission has extended the deadline for filing electronic versions of currently approved tariffs by a month or more, depending on the type of utility.

Clark, Thomas noted that tariffs for certain types of natural gas service, such as residential and commercial customers, may be more readily adaptable to electronic filing than tariffs relating to a single industrial customer. Typically, contracts for industrial sales contain detailed clauses concerning such provisions as billing and payment, measurement and heating values, and rate adjustments, which vary greatly in detail and in length from contract to contract. Clark, Thomas questioned whether the type of electronic filing format utilized by the Commission contains sufficient data fields to allow a gas utility to accurately and completely include all of the provisions from its currently approved tariffs, as well as all of the data required by the proposed rule. Clark, Thomas again expressed preference for filing in a read-only format. The Commission notes that the electronic filing forms will accept a large amount of data and should not cause any limitations. The Commission disagrees with allowing a read-only format because the Commission will use the information in an interactive database, as well as to produce different kinds of reports. The information made available to the public will be in read-only format and will not be susceptible to changes.

The Commission has amended the provisions of subsection (f)(3)(D) to reduce the time by which a request for an exception must be filed from 60 days to 30 days before the deadline to which the utility is subject. This should make it easier for a utility to file an exception, because it won't have to be filed so far in advance.

EPFS noted that subsection (f)(5) does not permit any exemptions from the electronic filing requirement, and opined that the Commission should not develop provisions that place unnecessary restrictions on its ability to react to reasonable circumstances and grant waivers. There may be unforeseen circumstances in the future that will prevent a gas utility from filing tariffs electronically that may be reasonable to the Commission, and a

waiver would be rationally granted. Moreover, the Commission may find it beneficial to require hard copy tariffs, rather than electronic tariffs in certain instances, particularly if computer viruses cannot be contained or security is compromised. EPFS encouraged the Commission to remove subsection (f)(5).

The Commission disagrees with this comment. Having utility tariffs in a mix of formats, both paper and electronic, makes the information in those tariffs as inaccessible as having them all on paper and kept in a filing cabinet. However, the Commission has clarified (f)(5) by including a provision that recognizes there may be temporary or technical obstacles to electronic filing, and these do not constitute a failure to file in the required format.

The Commission concurrently adopts the review of §7.44, required under Texas Government Code, §2001.039. The separate rule review documents will be filed with the *Texas Register* concurrently with this rulemaking.

SUBCHAPTER B. SUBSTANTIVE RULES

16 TAC §7.44

The Commission adopts the repeal under Texas Utilities Code, §104.001, which authorizes the Commission to determine the classification of customers and services and to ensure that gas utilities comply with their obligations under the statute.

Texas Utilities Code, §104.001, is affected by the repeal.

Issued in Austin, Texas, on April 22, 2002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2002.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. RECORDS AND REPORTS; TARIFFS; GAS UTILITY TAX

16 TAC §7.315

The Commission adopts the new rule under Texas Utilities Code, §104.001, which authorizes the Commission to determine the classification of customers and services and to ensure that gas utilities comply with their obligations under the statute.

Texas Utilities Code, §104.001, is affected by the new rule.

Issued in Austin, Texas, on April 22, 2002.

§7.315. Filing of Tariffs.

(a) Filing requirements for all tariffs. Each gas utility shall file with the Commission through the Commission's web site using an electronic format as prescribed by the Commission and the instructions contained in the Electronic Data Interchange (EDI) manual on the Commission's web site a tariff complying with minimum requirements as defined in subsections (c) and (d) of this section for all rates which are within the original or appellate jurisdiction of the Commission and which are currently in force for any gas utility service, product, or commodity. If the rate charged is based on a formula or requires a calculation to determine the unit rate to be charged, the utility shall, in the tariff filing, identify and report all components used in the calculation of the unit rate, including each component of the cost of gas. Each utility providing gas distribution system service or sales shall file, as part of the rates, copies of all rules and regulations relating to or affecting rates, utility service, products, or commodities furnished by the gas utility. Electronic filing instructions may be obtained from the Commission's web site at www.rrc.state.tx.us/electronic_filing/electronic_filing.html.

(b) Filing requirements for changes in rates or services. Whenever there is a change in any of the matters required to be filed by subsection (a) of this section, the utility shall file revised tariffs containing the minimum requirements as defined in subsections (c) and (d) of this section. If the rate charged is adjusted pursuant to an escalation provision or formula, the utility shall file an amended tariff that shows the current rate charged, including the unit of measure and the effective date. The utility shall file revised tariffs with the Gas Services Division within 30 days of the effective date of the change.

(c) Contents of tariffs. Each tariff filed at the Commission shall contain the following:

(1) the utility name;

(2) the full name of the customer or city, area, or environs that will be affected by the tariff. If the utility is requesting confidentiality for customer names, the utility shall report only the customer identification number assigned by the Gas Services Division. If a utility does not already have a customer identification number for a tariff, the utility shall notify the Gas Services Division prior to filing the tariff. The Gas Services Division shall assign a customer identification number or numbers and shall notify the utility of the assigned customer identification number or numbers prior to the utility filing the tariff;

(3) the utility contract number or rate schedule number;

(4) a list of the services the utility provides under the tariff. Service includes but is not limited to residential sales, commercial sales, industrial sales, sales to public authority, electric generation sales, gathering, transportation, compression, exchange, underground storage, sales for resale, city gate sales, and other. If the utility identifies the type of service as "other," the utility shall describe the service or services it offers under the tariff;

(5) the effective date of the rate schedule (GSD-1) or the effective date of the original contract or agreement (GSD-2);

(6) the effective date of the most recent amendment to the contract, rate schedule, or agreement;

(7) the current rate. The utility shall state the billing unit (such as Mcf, MMBtu, Cf, etc.); shall list all charges that may apply under the contract or agreement; shall describe all components used in the calculation of the current rate including but not limited to standby charges, reservation fees, imbalance provisions and charges, penalties, treating provisions, taxes, pooling fees, etc.; and shall state the effective date. A statement on the rate schedule that a particular rate includes certain provisions, without restating all the details or contingencies of the contract, is sufficient. If the rate the utility charges is based on a formula or requires a calculation to determine the unit rate to be charged, the utility shall identify in the tariff all components used in the calculation of the unit rate, including each component of the cost of gas;

(8) all rate adjustment provisions;

(9) the reason or reasons for filing. The utility shall state whether the filing:

(A) commemorates a new contract or agreement;

(B) is made in compliance with a Commission order, in which case the filing shall include the Commission docket number;

(C) is made in compliance with a city ordinance, in which case the filing shall include the city ordinance number or reference;

(D) amends an existing tariff; or

(E) is made for any other reason, in which case the utility shall provide an explanation; and

(10) the names, titles, addresses, telephone numbers and, if available, the electronic mail addresses of all persons who will respond to inquiries regarding tariff provisions.

(d) Additional requirements for specific types of tariffs. In addition to the information required by subsection (a) of this section, the utility shall also provide the following information, as applicable:

(1) For a gas utility distribution system service or sale, the utility shall file on GSD-1:

(A) all rate schedules. The utility shall include on these schedules the base rates and all adjustments to the base rates, including but not limited to late payment charges, gas cost adjustments, purchased gas adjustments, prompt payment provisions, franchise fees, authorized rate case expense surcharges, and weather normalization adjustments. The utility shall file every rate schedule applicable to the service area as part of the tariff, including any seasonal rates or special rates; and

(B) the current service charges in the city, environs, or other area affected by the tariff filing, in sufficient detail to enable customers to determine the applicability of each service charge. The utility shall include all service charges that may be assessed in the city, environs, or other area affected by the tariff filing, including, but not limited to, residential customer deposits, line extension policies and charges, meter testing charges, return check charges, initial connection charges, and reconnection charges.

(2) For transportation and exchange service or rates, the utility shall file on GSD-2:

(A) the customer name or customer identification number assigned by the Gas Services Division for which the utility is delivering gas;

(B) the contractual point or points of redelivery or customer identification number as established by the Gas Services Division;

(C) the information required by paragraph (4) of this subsection, if applicable;

(3) For utility service or sales, other than distribution system service or sales described in subsection (c) of this section, or for transportation and exchange service or rates, the utility shall file on GSD-2:

(A) the term of the contract. The utility shall provide the term specified in the contract. If the contract continues until canceled by either party, the utility may state that the contract is "evergreen" or other similar language as appropriate;

(B) the contractual point or points of redelivery or customer identification number as established by the Gas Services Division; and

(C) the information required by paragraph (4) of this subsection, if applicable.

(4) For a tariff reflecting a transaction described in Texas Utilities Code, §104.003(b), the utility shall:

(A) indicate which facts support the applicability of Texas Utilities Code, §104.003(b), to the transaction;

(B) indicate whether the transaction is between affiliates; and

(C) affirm that a true and correct copy of the tariff has been delivered to the customer simultaneously with delivery to the Commission and that the transaction is not a direct sale for resale to a gas distribution utility at a city gate.

(e) Compliance. Each tariff filing shall be subject to review by the Gas Services Division. If the Gas Services Division takes no action on a tariff filing on or before the 30th day after the filing is filed, the tariff is deemed accepted. If a tariff filing is deficient, the Gas Services Division will notify the utility of the item or items that must be corrected. The utility shall have a reasonable time, not less than 30 days, from the date of the Gas Services Division's notice of deficiency to make the required corrections and re-file the tariff. At the written request of the utility, the Gas Services Division may accept a rejected tariff as a statement of intent under Texas Utilities Code, §104.102. The Gas Services Division may docket a tariff or rate schedule filing on its own motion under Texas Utilities Code, §104.151, in circumstances that include but are not limited to a utility filing a tariff for an initial rate which on its face is not just and reasonable; filing a tariff for higher environs rates based on city rates without filing a statement of intent to increase rates for the environs; filing a tariff to increase a city gate rate without filing a statement of intent; or filing tariffs containing provisions other than rates that have substantive service rule changes that have not been reviewed.

(f) Electronic format. Each utility shall comply with this section by filing or refiling all current tariffs with the Commission through the Commission's web site using an electronic format as prescribed by the Commission and the instructions contained in the Electronic Data Interchange (EDI) manual on the Commission's web site. Electronic tariffs filed under this subsection shall not contain any substantive changes to currently approved tariffs on file with the Commission.

(1) Utilities providing natural gas service to residential, commercial and industrial customers in a distribution capacity as of the effective date of this section shall file or refile by June 28, 2002.

(2) All other natural gas utilities selling or transporting natural gas as of the effective date of this section shall file or refile according to the following schedule:

(A) Utilities with names beginning with the letters A-M shall submit electronic filings no later than August 30, 2002; and

(B) Utilities with names beginning with the letters N-Z shall submit electronic filings no later than September 30, 2002.

(3) A utility may request a good cause extension of the deadline to which it is subject. The request for extension shall be in writing and shall:

(A) be signed by an officer of the utility company;

(B) include a detailed explanation of the reason for the delay;

(C) include a proposed date by which the utility will have filed all tariffs in electronic format; and

(D) be filed no later than 30 days before the deadline to which the utility is subject.

(4) The Commission may grant an extension as requested; may grant an extension for less time than requested; or may deny a requested extension. If the Commission grants a utility an extension, the Commission may require the utility to file or refile a hard copy of its current tariffs using the tariff forms prescribed by the Commission.

(5) The Commission shall not grant exemptions from the requirement that utilities shall file their tariffs in electronic format. Temporary or technical problems with the Commission's web site or with the Internet that prevent a utility from making a timely electronic filing shall not constitute the utility's failure to comply with 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 April 22, 2002.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 7. GAS UTILITIES DIVISION

The Railroad Commission of Texas adopts the repeal of §7.60, relating to Suspension of Gas Utility Service Disconnection During Winter Months, and adopts new §7.460, relating to Suspension of Gas Utility Service Disconnection During Extreme Weather Emergency, without changes to the version published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9484). The Commission adopts the repeal and new rule to incorporate the requirements of Texas Utilities Code, §104.258, enacted by House Bill 2806, 77th Legislative Session (2001) (HB 2806), and to position the rule in a new numbering and organizational scheme for Chapter 7. New §7.460 will be in new subchapter D, to be entitled Customer Service and Protection.

The new rule incorporates the provisions of Texas Utilities Code, §104.258, which prohibit disconnection of natural gas service to residential customers during an extreme weather emergency, not just during the "winter months" as the current rule states; require providers to defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over; and direct providers to work with customers to establish a pay schedule for deferred bills. An extreme weather emergency is defined in Texas Utilities Code, §104.258(a)(1), as a period during which the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

The Commission adopts new §7.460(b)(1) to incorporate the requirements of Texas Utilities Code, §104.258, by including the legislative definition of "extreme weather emergency." New §7.460(b)(3) also reflects the statutory wording that prohibits disconnection of residential natural gas service on a weekend day unless provider personnel or agents are available to make collections and reconnect service. New §7.460(c) directs providers to defer collection of full payment of bills that are due during an extreme weather emergency until after the emergency is over, and to work with customers to establish a pay schedule for deferred bills. New §7.460(d) consists of language pertaining to level or average payment plans that was previously part of §7.60(c), except that paragraph (4), relating to a gas utility's ability to require a deposit, has been omitted, because customer deposits are governed by the provisions of §7.45, relating to Quality of Service. New §7.460(e) and (f) contain the provisions that were previously found in §7.60(d) and (e), respectively; the wording in those sections has not been changed.

During the drafting of the changes to existing rule §7.60 necessary to render the rule compliant with new Texas Utilities Code, §104.258, the Gas Services Division solicited comment from interested persons. Consumers Union, Texas Ratepayers' Organization to Save Energy, and Texas Legal Services Center (Consumers Union, *et al.*) jointly offered suggestions. The first one concerned changing "winter months" in the title of the rule to "extreme weather emergency," to be consistent with the language of new Texas Utilities Code, §104.258(c). The Commission agreed with this suggestion and reworded the title of proposed rule §7.460 accordingly.

The next suggestion of Consumers Union, *et al.*, concerned the rule's statement of jurisdiction in subsection (a). The comment stated that HB 2806 is clearly applicable to all gas utilities and providers of master metered service, and does not limit the applicability of the new Texas Utilities Code, §104.258, to those utilities over which the Railroad Commission has jurisdiction. Therefore, Consumers Union, *et al.*, recommended the phrase "within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001" should be stricken from the proposed rule. Texas Utilities Code, §102.001, limits the original jurisdiction of the Railroad Commission to the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality; Consumers Union, *et al.* stated the proposal inappropriately applied jurisdictional limitations to the protections of HB 2806. The law prohibiting disconnection of gas utility service when it is dangerously cold is intended to protect public health and safety, and is intended to provide the safeguard to all Texans, not just those in areas outside a municipality.

The Commission agreed with Consumers Union, *et al.*, that the law applies to all providers of natural gas service, utilities and master meter operators alike, operating within or outside of municipal boundaries. HB 2806 clearly does not limit the safeguards of the disconnection prohibition to those customers residing outside municipalities. However, HB 2806 enacted only the new provision Texas Utilities Code, §104.258; the bill did not amend the scope of the jurisdiction delegated to the Commission in Texas Utilities Code, §§102.001 and 102.002. Therefore, with respect to the scope of rulemaking and enforcement authority, the Commission's jurisdiction remains limited to those areas outside municipal boundaries. Providers of natural gas service must comply with Texas Utilities Code, §104.258, and municipalities may adopt the provisions of §7.460 as their own rule, should they so desire. However, the Commission lacks jurisdiction to compel them to do so.

With respect to level and averaged payment plans, Consumers Union, *et al.*, noted that the proposal made in this docket, GUD No. 9226, does not alter the language found in the current version of §7.60(d) regarding the requirements for level and average payment plans. Consumers Union, *et al.*, also noted that provisions concerning level and average payment plans are included

in the draft wording of a new rule §7.425 (which results from revisions to §7.45, relating to Quality of Service), found in GUD No. 9221. Consumers Union, *et al.*, pointed out that the current rule refers to §7.45, which will be repealed as part of GUD No. 9221, and this proposal did not make a conforming change. Consumers Union, *et al.*, wanted the rules on level and average payment plans to be consistent and consolidated; therefore, they recommended striking subsection (d) of this rule and covering level and average plans in GUD No. 9221, because those alternative payment plans (as contrasted with deferred billing) are not directly related to disconnection of service. They intended to file comments in support of required level and average plans in GUD No. 9221. The Commission reviewed these suggestions by Consumers Union, *et al.*, and agreed that the rules regarding level and average payment plans should be consistent. The Commission planned to address these concerns in GUD No. 9221, Review of the Commission's Quality of Service rules, to ensure that the rules are consistent.

Section 7.460 includes a requirement that providers give notice of the adoption of this rule to certain entities, and that utilities notify agencies which distribute low-income energy assistance and other social service agencies within their service area. Consumers Union, *et al.*, asked the Commission to set standards for this notice, including a written announcement of the rule revisions and a complete copy of the revised rules; a follow-up phone call from the utility to the agencies to assure that the written notice was received; and a written invitation to the applicable assistance agencies to a meeting sponsored by the utility where utility representatives would explain the revised rules to energy assistance agencies' staff and answer questions about the company's policies.

The Commission found that these provisions are most likely unnecessary, for two reasons. First, the prohibition on disconnection under certain conditions has been in place for almost a year; it is likely that most residential customers are aware of it because of the widespread publicity that accompanied its emergency adoption in November 2000. Second, many natural gas service providers serve so few customers that requiring them to conduct a meeting for energy assistance agencies is unnecessarily burdensome. The Commission expected that the larger gas utilities will have the resources and the incentive (driven, perhaps, by the assistance agencies' requests) to distribute updated information about their disconnection and deferred billing policies to the assistance agencies in their service areas without the Commission requiring them to do so.

Finally, Consumers Union, *et al.*, suggested that the Commission require gas utilities to report the number and location of accounts disconnected, and those under deferred payment plans on a monthly basis, because, in their view, such reporting will enable the Commission to track problem areas and monitor the effectiveness of the rule. The reporting of this information by utilities is consistent with reporting now required by the Public Utility Commission as part of Project No. 24375, Investigation into Disconnect and Payment Policies for Summer 2001. In addition the Commission should monitor weather information and issue news releases announcing when disconnection bans are in effect due to weather.

The Commission declined, at the time, to require reporting of disconnections as a part of this rule. Because most customers reside within municipalities, the Commission expected that most of the disconnections will occur within municipalities, which are not within the Commission's jurisdiction. Having information about such disconnections may be interesting, but any problems would not necessarily be within the Commission's authority to address. Further, the Commission declined to undertake the monitoring of weather information and issuance of news releases announcing when disconnection bans are in effect due to weather-- the very responsibilities that have been assigned to natural gas service providers under the rule. In addition, because the rules contemplate weather emergencies measured at the county level, it would be burdensome for the Commission to monitor and report on each of the 254 counties in Texas.

A comment by an individual suggested that, in addition to prohibiting disconnections during extreme winter weather, all disconnections should be preceded by placement of a tag (announcing the disconnection) on the residential customer's door 24 hours before the actual disconnection. The Commission declined to require natural gas service providers to incur the additional, and perhaps unrecoverable, expense of making a second trip to the residential customer's location; utility customers must already be notified of disconnection under current §7.45(4)(C). (Revisions to disconnection policies will be considered as part of GUD No. 9221.)

After the Commission considered all the informal comments, the rule was revised and published in the November 23, 2001, issue of the *Texas Register* for a 30-day comment period. The Commission received six comments on the published proposal. The Commission received comments from the following groups or associations: Consumers Union, Texas Ratepayers' Organization to Save Energy, Texas Association of Community Action Agencies, Public Citizen Texas, and AARP Texas. The comments were generally in favor of the rule, but offered suggestions for changes in specific provisions.

The Office of the Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section (OAG) filed comments supporting the adoption of the new rule and stating that the adoption of the rule properly implements the responsibilities of the Railroad Commission with respect to the enforcement of this provision. However, OAG suggested that §102.003 of the Texas Utilities Code provides the Commission with sufficient authority to require gas utilities to report all monthly disconnection numbers and asked that the rule be changed to provide that all gas utilities be required to report the number and location of all disconnected residential accounts on a monthly basis.

The Commission disagrees with this suggestion. A similar comment was received during the informal comment period discussed earlier in this preamble. As with the earlier comment, the Commission declines to require reporting of disconnections as a part of this rule. Because most customers reside within municipalities, the Commission expects that most of the disconnections will occur within municipalities, which are not within the Commission's jurisdiction. Having information about such disconnections may be interesting, but any problems would not necessarily be within the Commission's authority to address.

Next, TXU commented on subsection (d)(3) concerning the requirement for utilities to provide a copy of the rule to customers in each September or October billing. TXU recommended this provision be deleted because of the widespread publicity that accompanied the initial adoption of this rule in November 2000. TXU already provided a copy of the rule to its residential customers and owners, operators, and managers of master metered systems in 2000 and 2001. TXU stated the notice is costly and its value unclear, and suggested that a copy of the rule only be

required to be mailed to social services agencies that distribute funds as described in subsection (d)(1) and (2).

The Commission disagrees with these comments. The cost for a copy of the rule is negligible and, while a utility's overall list of customer locations may not change, the occupants of those customer locations may change if a house is sold, rented to new tenants, etc., and the Commission believes the public's right to be informed of this rule greatly outweighs the slight cost to the utilities.

Representative Ann Kitchen, Texas House of Representatives, District 48, commented on the proposed rule and authored HB 2806, which added §104.258, Disconnection of Gas Service, to the Texas Utilities Code. Representative Kitchen was concerned that the rule did not apply to municipalities, even though her intent in HB 2806 was that it would cover both municipalities and unincorporated areas and she intended that the Commission enforce this rule within municipalities. She also questioned the requirement to require written pledges by energy assistance providers as being unduly burdensome. Representative Kitchen also requested that the Commission establish a minimum period for deferred payment plans and prohibit inclusion of a five percent penalty on the deferred payment balance. Finally, she suggested that the definition of an extreme weather emergency be changed from a temperature of 32 degrees Fahrenheit for 24 hours to the temperature reaching 32 degrees Fahrenheit any time during a 24- hour period, not during the entire 24-hour period.

The Commission disagrees with these suggestions. Regarding municipalities, the Texas Utilities Code, §§102.001, 102.002, and 103.001, clearly limit the Commission's jurisdiction to the rates and services of a gas utility outside of a municipality, while giving the governing body of a municipality jurisdiction within the municipality. The Commission agrees that §104.258, as added by HB 2806, applies to both the Commission, with regard to unincorporated areas, and to municipalities. However, the Commission's authority in §§102.001, 102.002, and 103.001 was not expanded to include Commission jurisdiction over municipalities. Therefore, while a municipality is free to adopt the Commission's rule as its own for use within its municipal boundaries, the Commission cannot enforce this rule within a municipality.

Regarding the written payment pledges by energy assistance providers, the Commission's intent was that the pledge be documented in writing, with "in writing" meaning any communication that leaves a record, such as a letter, fax, or email. The rule allows an oral pledge to be made when time is of the essence, but the oral pledge must be followed with a written confirmation as soon as practical. The Commission believes that it is in the best interest of all parties for the utility to keep a record of all communications when an energy assistance provider makes a payment pledge.

Concerning the suggestion for minimum periods for deferred payment plans and a prohibition on a five percent penalty, the Commission's proposed rule requires utilities to work with customers to establish a deferred payment plan under the terms of the Commission's quality of service rule, §7.45. Although this rule as it exists now does not include a minimum payment period, the rule is in the process of being revised to include a minimum of three installments in a deferred payment plan, as suggested by Representative Kitchen. This three-month period would apply to all deferred payment plans, not just those created in response to a disconnection notice. That forthcoming rule proposal does not include a change regarding the five percent penalty, however. This penalty is not a finance charge, but is a reimbursement to the utility for additional costs it incurs related to the delinquent account. The penalty is calculated as a one-time charge on the original amount of the outstanding bill and can be added to the deferred balance in order to determine a reasonable payment period.

Regarding the last comment on the extreme weather emergency, the rule language (*i.e.*, a period when the day's temperature did not exceed 32 degrees Fahrenheit and is predicted to remain at or below that level for the next 24 hours) is consistent with the language of the new legislation. Generally, the Commission cannot adopt a rule that has a greater impact on a party than the legislation it is intended to implement. Defining the temperature threshold as suggested by Representative Kitchen would allow more opportunities for disconnection to be prohibited. Although this may benefit consumers, it would have a negative impact on natural gas service providers that experience a larger proportion of delinquent customers, such as master meter operators. Such small natural gas service providers are likely to be particularly sensitive to customer delinquencies, when nonpayment by one customer might impair the cash flow of the provider and thus threaten service to all other customers.

Clark, Thomas & Winters (Clark, Thomas) indicated concern that the statute and proposed rule could be interpreted to prohibit the collection of any amount from customers during a weather emergency. Clark, Thomas suggested some language be added to the preamble stating that the "statute and rule prohibit the termination of service because of the inability to pay a delinquent account during a weather emergency. The utility may collect that portion of a delinquent bill that the customer can pay. The utility will also work with that customer to establish a deferred payment plan. The rule does not address the collection of bills in the ordinary course of business but only applies to those customers who are at risk of having service terminated during a weather emergency because of a delinquent bill. The rule is intended to apply only to active customers."

The Commission notes that language in a rule preamble does not remain with the rule after it is adopted and published in the Texas Administrative Code. Any requirements should be stated in the rule itself, not the preamble. However, even if these suggestions were made to apply to the rule itself, the Commission disagrees with the language. The wording of the rule is clear that it applies only in a specific situation.

Consumers Union, Texas Ratepayers' Organization to Save Energy, and Texas Legal Services Center (Consumers Union, *et al.*) jointly filed comments. The comments stated that the Texas Association of Community Action Agencies and Public Citizen Texas also joined in the comments to express concern because the rule provides unduly narrow construction of the legislation and was significantly watered down from the original (emergency) version. Specifically, Consumers Union, *et al.* stated, as did Representative Kitchen, that new §104.258, as added to the Texas Utilities Code by HB 2806, applies to all gas utilities and gives the Commission authority over municipalities in this instance, even though Texas Utilities Code, §§102.001 and 102.002, limit the Commission's authority to utilities outside municipalities. Consumers Union, *et al.* believed that the jurisdictional limitations of §§102.001 and 102.002 do not prohibit the Commission adopting a rule that applies to all gas utilities and stated that the legislature clearly intended for the disconnection provisions in §104.258 to apply to all gas utilities statewide.

The Commission disagrees with this characterization of 104.258. As explained previously, the Texas Utilities Code, §§102.001, 102.002, and 103.001, clearly limit the Commission's jurisdiction to the rates and services of a gas utility outside of a municipality, while giving the governing body of a municipality jurisdiction within the municipality. The Commission agrees that Texas Utilities Code, §104.258, as added by HB 2806, applies to both the Commission, with regard to unincorporated areas, and to municipalities. However, HB 2806 did not expand the Commission's authority under §§102.001, 102.002, and 103.001 to give the Commission jurisdiction over municipalities. Therefore, while a municipality is free to adopt the Commission's rule as its own for use within the municipality, the Commission cannot enforce this rule within municipalities.

Consumers Union, *et al.* also had a similar comment to that of the OAG regarding the reporting of the number and location of disconnections and the monitoring of weather; the comment also was made during the informal comment period. Consumers Union, *et al.* stated that the reporting of this information by utilities is consistent with such reporting now required by the Public Utility Commission as part of Project No. 24375, Investigation into Disconnect and Payment Policies for Summer 2001.

The Commission disagrees with these suggestions. As explained previously, the Commission declines to require reporting of disconnections as a part of this rule. Because most customers reside within municipalities, the Commission expects that most of the disconnections will occur within municipalities, which are not within the Commission's jurisdiction. Having information about such disconnections and weather trends may be interesting, but any problems would not necessarily be within the Commission's authority to address.

Consumers Union, *et al.* viewed the definition of extreme weather emergency, as defined both in HB 2806 and in the proposed rule, as the minimum standard that a gas provider is obligated to meet. Consumers Union, *et al.* suggested that if the Commission adopts the rule as proposed, there will be a need for emergency rulemaking in the future because the "below 32 degree F standard for 24 hours" is insufficient to protect consumers from life-threatening conditions.

The Commission disagrees that the provisions of HB 2806 are only minimum standards. In fact, the Commission may not propose a rule for which it has no authority. The Commission has proposed the rule to comply with the legislature's approval of Texas Utilities Code, §104.258, as enacted by HB 2806.

Consumers Union, *et al.* commented, as did Representative Kitchen, that the requirement for a written pledge from an energy assistance provider would be too burdensome. The Commission disagrees with this comment as explained previously in its response to Representative Kitchen's comment.

Finally, Consumers Union, *et al.* suggested that the Commission's deferred payment plan rule, 16 TAC §7.45, relating to Quality of Service, applies to any situation where a consumer cannot pay the full amount owed, and suggested that §7.460 should include its own deferred payment plan language that would apply only to extreme weather emergency disconnections. Consumers Union, *et al.* states that the rule as proposed would make it impossible for many consumers who wish to pay their bill in full to do so. Consumers Union, *et al.* suggests that, at a minimum, the rule should include provisions to guarantee that every customer with an account in arrearage because of a weather emergency is offered a deferred payment plan; that the plan include payment terms that the customer is financially able to meet; that a period of six months to 36 months be allowed for the repayment; that the customer will be charged only for the cost of gas, with no late fee, interest, penalty, or service charges; that the terms and conditions of the deferred payment plan be in writing; and that the customer is entitled to renegotiate the terms of the agreement if circumstances change.

The Commission disagrees with these suggestions. The Commission sees no need to repeat deferred payment plan language in this rule when that language already exists in §7.45. However, because the Commission is reviewing §7.45 in preparation for proposing amendments to it, the Commission will consider the suggestions regarding the payment period, the cost of gas, and the terms and conditions of the plan.

AARP Texas filed late comments which supported the comments made by Consumers Union, *et al.* The Commission has already addressed all of the comments from that group.

Also, the Commission concurrently adopts the review of §7.60, under Texas Government Code, §2001.039. The separate rule review documents will be filed with the *Texas Register* concurrently with this rule adoption.

SUBCHAPTER B. SUBSTANTIVE RULES

16 TAC §7.60

The Commission adopts the repeal of §7.60 under Texas Utilities Code, §§102.001 and 104.251, which give the Railroad Commission exclusive original jurisdiction over the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality and a gas utility that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public, and require gas utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and Texas Utilities Code, §§124.001 and 124.002, which give the Commission jurisdiction over master meter operators and require the Commission to adopt rules requiring master meter operators to allocate fairly the cost of the gas consumption of each dwelling unit.

Texas Utilities Code, §§104.251, 124.001, and 124.002, are affected by the adopted repeal.

Issued in Austin, Texas, on April 22, 2002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2002.

TRD-200202467
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: May 12, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 475-1295

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SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

16 TAC §7.460

The Commission adopts new §7.460 under Texas Utilities Code, §§102.001 and 104.251, which give the Railroad Commission exclusive original jurisdiction over the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality and a gas utility that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public, and require gas utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; Texas Utilities Code, §§124.001 and 124.002, which give the Commission jurisdiction over master meter operators and require the Commission to adopt rules requiring master meter operators to allocate fairly the cost of the gas consumption of each dwelling unit; and Texas Utilities Code, §104.258, which prohibits a provider from disconnecting natural gas service to residential customers either on a weekend day, unless personnel of the provider are available on that day to take payments and reconnect service, or during an extreme weather emergency.

Texas Utilities Code, §§104.251, 104.258, 124.001, and 124.002, are affected by the adopted new rule.

Issued in Austin, Texas, on April 22, 2002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.32

The State Board of Education (SBOE) adopts new §74.32, concerning physical activity programs, with changes to the proposed text as published in the February 8, 2002, issue of the *Texas Register* (27 TexReg 854). The adopted new section specifies provisions relating to physical activity programs for elementary school students pursuant to the Texas Education Code (TEC), §28.002, as amended by Senate Bill (SB) 19, 77th Texas Legislature, 2001.

In response to comments, the following changes have been made to the section since published as proposed.

Language in the first sentence was modified to clarify that all students in full-day, rather than half-day, kindergarten are required to participate in physical activity. Paragraph (2) was modified to reflect that school districts must consider, rather than include, health-related needs of the students and the recommendations of the local health advisory council.

The following comments were received regarding the adoption of the proposed new rule.

Comment. An individual asked for clarification regarding the rule that was approved at first reading.

Agency Response. The original recommendation presented to the SBOE in January 2002 for first reading proposed leaving time requirements to the districts. However, the SBOE amended the original recommendation to include language that would require elementary school students to participate in physical activity for a minimum of 30 minutes per day or 135 minutes weekly.

Comment. Several individuals inquired about specifications of the rule relating to kindergarten and/or half-day kindergarten students. These individuals wanted to know if the rule means that half-day kindergarten is required to spend 30 minutes daily in physical education or structured physical activity.

Agency Response. The agency agrees that consideration should be given to half-day kindergarten and has modified the rule to clarify that it applies to full-day kindergarten.

Comment. A representative from Cypress-Fairbanks Independent School District (ISD) inquired about the adverse effects of the proposed new rule on "pull-out" programs. The individual stated that requiring time for physical education will take away from TAAS preparation and/or other possibilities for pull-out sessions.

Agency Response. The agency disagrees. The adopted rule should have no adverse effects on pull-out programs because districts have the authority to structure course offerings to meet the needs of their students.

Comment. A representative from Rusk ISD and an individual stated that the proposed rule and prescribed minutes would cut the time in the school day available for academic coursework. The individuals also disagreed with the proposed rule because it does not allow local districts to exercise local control.

Agency Response. The agency disagrees. The adopted rule for 30 minutes daily or 135 minutes per week provides local districts the flexibility to schedule physical activity while considering other academic disciplines.

Comment. An individual from Royal ISD stated that with the current number of required subjects combined with exposure to liberal arts and foreign language, the proposed rule will add constraint and suffering of certain subjects.

Agency Response. The agency disagrees. The intent of the new rule is not to take away from existing programs but to provide a quality physical education to meet the health needs of the children. School districts have the local flexibility in scheduling to provide for a well-balanced enriched curriculum that could support a variety of enrichment and foundational subjects.

Comment. An individual from the Texas Music Educators Conference stated that the mandated physical education requirements would decrease the instructional minutes for music. The individual also disagreed with the proposed rule because it would open the door to minute assignments for all subjects in the required curriculum.

Agency Response. The agency disagrees. Local districts still have the authority to create their own campus schedules, while honoring the importance of all subjects. Also, the specification

of time for physical activity would not necessarily lead to mandated time requirements for other subjects. Rules related to the amount of time spent in instruction were repealed during the 1995-1996 sunset review of SBOE rules. The adopted new 19 TAC §74.32 reflects the critical importance emphasized by the 77th Texas Legislature for a minimum amount of physical activity for elementary school students to prevent obesity and certain diseases.

Comment. An individual from Dumas ISD expressed concern about having to give up music time for physical education because of the way the schedule is built. The individual asked the SBOE to reconsider the proposed rule and replace it with 25 minutes a day at a minimum.

Agency Response. The agency disagrees. Local administrators will have the ability to develop their schedules to allow for flexibility and allotted time for music and other enrichment activities as well.

Comment. Several individuals supported the new proposed rule because it does not imply that minutes need to be taken out of other enrichment activities to satisfy the physical education requirements.

Agency Response. The agency agrees. The intent of the new rule is to ensure that a quality physical education is provided for all students but not at the risk of other enrichment subject areas.

Comment. The Texas Elementary School Principals Association, the Texas Music Educators Association, and three individuals disagreed with the proposed rule because they felt that the unique size of campuses and numbers of course selections per grades alone already constrains and dictates campus schedules. The commenters stated that districts will therefore have to sacrifice the time of other enrichment classes in order to meet the time requirements of daily physical education.

Agency Response. The agency disagrees. The proposed rule allows local districts to develop their own campus schedules, while honoring the importance of all subjects.

Comment. A representative from Sinton ISD and several individuals were concerned that the proposed new rule will make elementary scheduling very inflexible by having to rotate noncore subjects in a five-day week with a limited number of personnel; in addition, the district would have to add new facilities.

Agency Response. The agency disagrees. Local districts have a variety of possible scheduling and staffing options to utilize.

Comment. A representative from Wichita Falls ISD and an individual supported the proposed rule because local control in the past has allowed districts to emphasize academics to the degree of removing physical education altogether.

Agency Response. The agency agrees that the adopted rule will allow for a balanced education and will maintain the existence of physical education in public schools.

Comment. An individual asked the SBOE and commissioner to reconsider the daily physical education rule for Grades 1-6 by making it a local decision. The individual stated that the two districts with which they are associated offer physical education 45 minutes at least three times a week. This individual also stated that decisions should be left to the local districts to determine what is best for the students in the district. Furthermore, this individual stated that the public educational system cannot fix everything wrong with our society and that we are placing too much responsibility on the schools.

Agency Response. The agency disagrees. The policy for time requirements in physical education was carefully developed at the state level to address the statewide problem of fitness in our children. However, the implementation of such a rule will be determined locally through policies and procedures developed with the consideration of the local health advisory councils.

Comment. Several individuals supported the new proposed rule, but would like to see the average minutes done biweekly instead of weekly to accommodate the flexibility in block schedules that hold recess for 45 minutes every other day.

Agency Response. The agency disagrees. The policy for the time requirements in physical education was carefully developed at the state level to address the statewide problem of fitness in our children. However, the implementation of such a rule will be determined locally through policies and procedures.

Comment. The Texas Association for Health, Physical Education, Recreation, and Dance (TAHPERD) and a professor from Southwest Texas State University supported the proposed rule, but would like to see it amended to mandate 30 minutes daily and include an accountability system to ensure that the time requirements are being met.

Agency Response. The agency disagrees with these recommended amendments. The adopted rule allows local districts the flexibility to create their master schedules in accordance with local needs and state requirements without mandating one option for physical education time requirements. The SBOE does not have the authority to mandate a prescribed accountability system for requiring daily physical activity. Authority for the Public Education Information Management System (PEIMS) reporting requirements rests with the commissioner of education.

Comment. A board member of Lago Vista ISD expressed concern about the loss of local control as a result of constant policymaking and unfunded mandates. The comment stated that the local education experts should make these decisions and not policymakers. The comment also expressed the concern of having to hire more teachers and build more facilities under an unfunded mandate.

Agency Response. The agency disagrees. The implementation of the adopted new rule will allow local districts to determine the policies and procedures involved in the implementation process. Therefore, local education experts are able to specify the details of the implementation process within their districts.

Comment. Representatives from the Austin ISD Health Advisory Council, the Texas Council on Cardiovascular Disease and Stroke, TAHPERD, Round Rock ISD, Travis Orthopedics and Sports Specialists, and five individuals commented in support of daily physical activity as a practice for obesity prevention, disease prevention, and reducing the risk factor of heart disease. These commenters encouraged daily physical education in emphasizing that the health, safety, and nutrition of students is the most important aspect of educating the whole child.

Agency Response. The agency agrees that daily physical activity improves the health and nutrition of children.

Comment. A school nurse from Anahuac ISD supported the proposed rule because it coincides with the state plan for diabetes treatment, education, and training.

Agency Response. The agency agrees and supports diabetes treatment, education, and training for children.

Comment. Several individuals inquired whether any changes would be proposed after first reading.

Agency Response. In the March 2002 SBOE agenda, the SBOE was presented with a version of the rule that reflected what was filed as proposed in January and another modified version that incorporated clarified language based upon public comments. Those changes included the following. The rule was reorganized into subsections (a)-(c). In subsection (a)(1), language was added to emphasize that schools may choose a physical education class or a combination of a physical education class and a structured activity during recess. Also, the phrase "during a school campus' recess" was added to this subsection to provide consistency with language in Senate Bill 19. Subsection (a)(2) was modified to reflect that local procedures for providing required physical activity should consider, rather than require, the inclusion of health-related education needs. This subsection was also modified to specify that any recommendations of the local health advisory council be considered in local procedures. Subsection (b) was added to clarify that schools that do not provide daily physical activity may provide less than 135 minutes in a week with fewer than five instructional days. Subsection (c) was added to specify that schools may restrict a student's participation in required physical activity because of illness or disability. The addition of subsections (b) and (c) addressed concerns and inquiries raised by SBOE members during deliberation of this item at the January meeting.

During deliberation of this item during their March 2002 meeting, the SBOE took action that adopted the version of the rule that was filed as proposed in January, with slight modifications to specify the inclusion of full- day kindergarten and to allow schools to consider, rather than require inclusion of, health-related education needs and recommendations of the local health advisory council.

Comment. The Texas Academy of Family Physicians, TAHPERD, and two individuals supported the proposed rule because it is in line with research that shows increased physical activity improves the overall health and learning capabilities of children. There was concern, however, that allowing the option of recess would allow districts to ignore the requirement of TEKS-based instruction.

Agency Response. The SBOE recognizes the alignment of the rule with research on this matter. Concerning the second part of this comment, the adopted rule does not specify the option to use recess as time to administer TEKS- based structured activity. The adopted rule specifies that participation must be in a TEKS-based physical education class or a TEKS-based structured activity. Local districts have the flexibility in scheduling classes to meet the needs of their children.

Comment. The Texas Classroom Teachers Association supported the proposed rule, but asked the SBOE to consider certain aspects which include the following: (1) physical education should be a separate activity from recess because they feel it is important for recess to remain an unstructured activity to young children; (2) the possibility could exist of exceedingly large sizes of physical education classes as a result of the new rule; (3) and there could be a need for a teacher certified in physical education to teach all related structured activity and physical education classes.

Agency Response. The agency agrees and disagrees in part. The rule, as adopted, does not specify the option to use recess as time to administer TEKS-based structured activity; however, it does allow local districts the flexibility in scheduling classes and hiring personnel to meet the needs of their children.

Comment. The Texas Association of School Boards, the Texas Association of School Administrators, and the Texas School Alliance strongly urged the State Board of Education to reconsider the following provisions that had been included in the modified version of the proposed rule: (1) remove the requirement for a minimum number of daily or weekly minutes; (2) consider the impact on other subject areas; (3) remove the requirement that structured activity during recess be TEKS-based; (4) address the needs of students with illness or disability; (5) address half-day kindergarten; and (6) remove the requirement that school districts' procedures must include recommendations of the local health advisory council to establish rules and procedures for daily physical education.

Agency Response. The agency agrees and disagrees in part, as follows: (1) the adopted rule maintains the requirement for a minimum number of minutes daily or weekly because SB 19 authorizes the SBOE to determine the amount of time to implement physical education; (2) consideration was given to the impact the proposed rule may have on other subject areas, but it has been determined that the local control that school districts possess in establishing procedures, rules, and scheduling will accommodate these considerations; (3) the adopted rule specifies that participation must be in a TEKS-based physical education class or a TEKS-based structured activity. Local districts have the flexibility in scheduling classes to meet the needs of their children; (4) it is not necessary for the adopted rule to address the needs of students with illness and disability, since health classifications for physical education are specified in 19 TAC §74.32; (5) the agency agrees with the need to address the issue of half-day kindergarten and modified the rule to specify that it applies to full-day kindergarten; and (6) the agency agrees with the recommendation regarding the local health advisory councils and has modified the rule to reflect that school districts must consider, rather than include, health-related needs of the students and the recommendations of the local health advisory council.

The new section is adopted under the Texas Education Code (TEC), §28.002(l), which authorizes the State Board of Education, after consulting with educators, parents, and medical professionals, to require by rule that a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting participate in daily physical activity as part of a school district's physical education curriculum or through structured activity during a school campus's daily recess.

§74.32. Physical Activity Programs for Elementary School Students.

In accordance with Texas Education Code, §28.002, all students enrolled in full-day kindergarten or Grades 1-6 in an elementary school setting are required to participate in physical activity for a minimum of either 30 minutes daily or 135 minutes weekly under the following conditions:

(1) participation must be in a Texas Essential Knowledge and Skills (TEKS)-based physical education class or a TEKS-based structured activity; and

(2) each school district shall establish procedures for providing the required physical activity that must consider the health-related education needs of the student and the recommendations of the local health advisory council.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
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For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.16

The Texas State Board of Medical Examiners adopts an amendment to §185.16, concerning Supervising Physician, without changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1430) and will not be republished.

The amendment is necessary to prohibit a physician assistant from being supervised by a physician under a board order.

One comment was received from the Texas Academy of Physician Assistants in support of the rule.

The amendment is adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202441
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 305-7016

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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §§189.1 - 189.14

The Texas State Board of Medical Examiners adopts new §§189.1-189.14, concerning Compliance Program, without changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1430) and will not be republished.

The new chapter contains requirements and responsibilities for probationers and the system for monitoring a probationer's compliance.

No comments were received regarding adoption of the rules.

The new sections are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6

The Texas State Board of Medical Examiners adopts an amendment to §193.6, concerning designation of prescriptive authority to alternate practice sites, without changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1434) and will not be republished.

The amendment is necessary as a result of SB 1166.

One comment was received from the Texas Nurses Association (TNA). TNA recommends: 1) that the language in §§193.6(c)(2), (d)(2), and (e)(1) not be changed so it remains "a physician licensed by the board may delegate" and 2) that the wording of §193.6(b)(1) be conformed to the other sections so it reads "At a site serving medically underserved populations a physician licensed by the board may delegate". Following consideration of the comments, the board determined that the change proposed by the Texas Nurses Association would not enhance the rule; therefore the rule was adopted without change.

The amendment is adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: May 9, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 305-7016

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 223. FEES

22 TAC §223.1

The Board of Nurse Examiners adopts an amendment to 22 TAC §223.1, concerning Fees, with two changes to the proposed text published int the *Texas Register* on March 15, 2002, at (27 TexReg 1968). This section establishes the fees necessary for the administration of the Board's functions. On July 20, 2001, the Board originally met and approved increased fees to fund the Board's appropriation. The 77th Legislature in Rider 2 of the Fiscal Year 2002-2003 Appropriations Act approved budget appropriations for the Board contingent on those appropriations being paid through Board fee collections. The fees were originally adopted on an emergency basis in order to comply with the legislative mandate to cover all appropriations through fees (26 TexReg 6071). The amendment became effective August 6, 2001, and the fees were applied beginning September 1, 2001. On December 4, 2001, the emergency adoption expired without the fees being subsequently proposed and adopted on a permanent basis. The amendment was subsequently proposed again with additional online renewal fees on March 15, 2002. On March 12, 2002, the Board approved the amendment with one fee change on an emergency basis which became effective upon filing with the *Texas Register* on April 4, 2002.

In addition to the necessary fees for revenue, the proposed amendment increased the renewal fee for registered nurses (RNs) by $2 and for Advanced Practice Nurses (APNs) by $4 to cover the Board's participation in the Texas Online Project beginning May 1, 2002. In subsection (a), paragraph (14), the APN's renewal fee should have reflected only a $2 increase. When a nurse renews his/her RN license and his/her APN certification, the total increase will be $4. Subsection (a), paragraph (7) contains an updated reference to the codified statute. Section 2054.252 of the Texas Government Code creates the Texas Online Authority and the Texas Online Project. The legislation encourages the Board and other licensing agencies to participate in the project. Subsection (d) of § 2054.2606 authorizes the Texas Online Authority to set the amount of fee that a participating licensing agency may charge its license holders. The increase in fees must be in effect in order to raise the necessary revenue for fiscal year 2002 and to offset the additional administrative costs incurred by the Board from its participation in the Texas Online Project.

No comments were received regarding adoption of the amendment.

This amendment is proposed under § 301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

(1) initial licensure fee - $65; (2/99)

(2) duplicate or substitute license - $20; (2/99)

(3) duplicate or substitute permanent certificate - $20; (2/99)

(4) duplicate permit - $5.00; (11/85)

(5) endorsement - $125; (5/02)

(6) licensure (each biennium) - $47; (5/02)

(7) issuance of a temporary permit under § 301.258 - $15 (5/86)

(8) reactivating from inactive status:

(A) less than four years - $5.00;

(B) more than four years - $10; (11/85)

(9) accreditation of new schools and programs - $150; (11/85)

(10) filing of affidavits in re-change of name - no charge; (11/85)

(11) verification of records - $20; (2/99)

(12) bad checks - $15; (11/85)

(13) late fee for re-registration:

(A) less than 90 days - $45; (11/90)

(B) more than 90 days - $90; (11/90)

(14) Advanced Practice Nurse - initial credentials - $75; (5/02)

(15) declaratory order of eligibility - $150; (5/02)

(16) eligibility determination - $150; (5/02)

(17) docketing fee in non disciplinary matters - $600; (12/93)

(18) Registered Nurse, Retired - $10; (12/93)

(19) Advanced Practice Nurse renewal - $52; (5/02)

(20) Initial Prescriptive Authority - $25; (10/97)

(21) outpatient anesthesia registry renewal - $35; (9/00)

(22) outpatient anesthesia inspection and advisory opinion - $625; (9/00)

(b) all fees are non-refundable. (2/99)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2002.

TRD-200202421
Kathy Thomas
Executive Director
Board of Nurse Examiners
Effective date: May 9, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-6823

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND
SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.52

The Texas Water Development Board (the board) adopts amendments to 31 TAC §371.52 concerning lending rates under the Drinking Water State Revolving Fund program without changes to the proposed text as published in the March 8, 2002 issue of the *Texas Register* (27 TexReg 1662) and will not be republished. The amendments will set interest rates for loans from the board to private and other entities for which the interest on the bonds are subject to the federal income tax (taxable entities). The current method for setting interest rates for taxable entities is to subtract 185 basis points from the prime lending rate. The prime lending rate is a base rate for corporate loans made by commercial banks and it does not follow the conventional indices and scales normally utilized by the board for establishing interest rates.

The board proposes by this amendment to establish the interest for loans to these private and other taxable entities to be 140% of the rate charged on loans by the board to entities the interest on whose bonds is not subject to the federal income tax (tax exempt entities). This percentage is the average percentage between the rates published by Bloomberg Taxable Index for BBB rated bonds and the rates for tax-exempt, general obligation, 20 year maturity, mixed quality bonds published by Bond Buyer Index tax-exempt for the period of March 1999 through November 2001. Concurrently with these amendments, the board has proposed amendments to chapter 375 of the board's rules. Taken together, these amendments will establish a uniform method by which interest rates are calculated for private and taxable applicants, in each respective program.

There were no comments received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2002.

TRD-200202417
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 8, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 463-7981

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER C. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §375.306

The Texas Water Development Board (the board) adopts new 31 TAC §375.306 concerning lending rates under the Nonpoint Source Pollution Loan and Estuary Management Program of the Clean Water State Revolving Fund without changes to the proposed text as published in the March 8, 2002 issue of the *Texas Register* (27 TexReg 1663) and will not be republished. The new section will provide for a methodology to calculate interest rates for applicants utilizing the Nonpoint Source Pollution Loan and Estuary Management Program. There is currently no rule detailing the method, but rather a guideline on setting rates that requires staff to evaluate a market equivalent rate. There have been only limited circumstances in the past where this method needed to be applied because water supply corporations, the primary TWDB taxable borrowers, are not eligible applicants in the Clean Water State Revolving Fund. The possibility for taxable borrowers in the Clean Water State Revolving Fund increased in September 2001 when rules were adopted authorizing the board to make loans to "persons" for nonpoint source pollution control.

The new section will set interest rates for persons at 140% of the rate for tax exempt applicants. This percentage is the average ratio between the rates published by Bloomberg Taxable Index for BBB rated bonds and the rates for tax-exempt, general obligation, 20 year maturity, mixed quality bonds published by Bond Buyer Index tax-exempt for the period of March 1999 through November 2001. Concurrently, the board has proposed amendment to Chapter 371 of the board's rules. Taken together, these amendments will establish a uniform method by which interest rates are calculated for private and taxable applicants, in each respective program.

There were no comments received on the proposed new section.

The new section is adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2002.

TRD-200202416
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 8, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 463-7981

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES

40 TAC §42.6, §42.12

The Texas Department of Human Services (DHS) adopts an amendment to §42.6 and new §42.12, in its Medicaid Waiver Program for People who are Deaf-Blind with Multiple Disabilities chapter. The sections are adopted with changes to the proposed text published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9369).

DHS is adopting related policy in Chapters 48 and 50 in this issue of the *Texas Register*.

Justification for the amendment and new section is to comply with riders 7(b)(2) and 37 to the DHS appropriations in the Appropriations Act, 77th Legislative Session, that allow DHS to transfer nursing facility funds to the Community Care program to cover the cost in the shift in services. These riders require DHS to not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers if those services are required for the individual to live in the most integrated setting possible. The sections also establish the basis for approving or denying requests for changes in the waiver client's service plan.

DHS received comments from United Cerebral Palsy of Texas, the Arc of Texas, the Coalition of Texans with Disabilities, and the Disability Policy Consortium. A summary of the comments and the department's responses follow.

Comment: All four agencies recommended changes to the proposed rules concerning Rider 7. They requested language clarifying how changes to the waiver service plan are handled. Also suggested were ways to avoid jeopardizing community services if the estimated cost of the services exceeds the cost ceiling.

Response: DHS agrees and changed §§42.12.

Comment: Regarding the Deaf-Blind waiver, a comment was received that §42.6, concerning planning for and provision of services, should state that enrollment is limited by the availability of state funding.

Response: DHS agrees and has added a statement to the rule that enrollment is limited to the availability of state funding.

Comment: All four agencies recommended changes to the proposed rules, for all four waiver programs, regarding the wording of the Rider 37 rule. They suggested that in addition to providing information to nursing facility new admissions and nursing facility discharges on Community Care services, an application for Community Care services also be provided.

Response: DHS disagrees. DHS does not require an application for Community Care services. Individuals may request Community Care services at any time and are placed on an interest list on a first-come, first-served basis, if they request waiver services. If other Community Care entitlement services are requested, the eligibility process will begin. In addition, Texas Health and Human Services Commission (HHSC) §351.15 requires DHS to provide each long-term care client information about long-term care services appropriate to his needs. DHS complies with this rule.

Comment: Two agencies asked what the appeal process would look like if the Community Based Alternatives (CBA) or the Consolidated Waiver Program (CWP) case manager denies the client's request to exceed the individual cost ceiling.

Response: The process is the same as in any other adverse action against the client. The client is given a written notice of the denial on the denial of services form, which also explains a client's appeal rights. The client may appeal the denial verbally to the case manager or by completing the back of the denial of service form and sending it back to the case manager. The DHS hearing officer then sets a hearing date and informs the client of the date. The hearing officer makes client rights available to all clients requesting a fair hearing.

In addition to the changes indicated above, DHS made minor editorial changes to §42.6 and §42.12 in order to improve clarity and understanding.

The amendment and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§42.6. Planning for and Provision of Services.

(a) Applicants must have an individual plan of care for home and community-based services, developed by the interdisciplinary team composed of a case manager and other appropriate professional staff who meet the qualifications specified in the waiver request. The individual plan of care for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration. The individual plan of care for home and community-based services must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver program services authorized on the individual plan of care are necessary to avoid ICF-MR/RC VIII institutional placement and are appropriate to meet the applicant's needs in the community.

(b) The individual plan of care for home and community-based services must be approved by the Texas Department of Human Services (DHS) and updated by the provider at least annually. Any gaps in the coverage periods of the individual plan of care approved by DHS result in loss of payment to the provider.

(c) The estimated annual cost of the applicant's individual plan of care for a period of 364 days from the initial enrollment for home and community-based services must not exceed 115% of the average cost of institutional care in an ICF-MR/RC VIII facility.

(d) Enrollment into this waiver program is limited to the number of participants approved by the Centers for Medicare and Medicaid Services (CMS) or the availability of state funding. When the number of participants can be increased, DHS DB-MD waiver program will analyze need based on number of Project Link referral forms received. At that point, a Request for Proposals (RFP) will be issued statewide announcing the need for providers to serve particular counties or multiple counties where clients desire services. A team of experts will evaluate received proposals based on approved common standards. A contract will be signed by the approved providers and DHS, detailing standards to be followed in provision of home and community based services. Potential participants on the DHS centralized waiting list will be notified of qualified providers who can serve them in the location they desire. Notification of service availability to potential participants will be in order of the date DHS receives the Project Link Referral form. The

providers will likewise be notified of those clients desiring services in their area. Once the providers and applicants decide to begin services, the case manager employed by the providers will establish eligibility of the clients and submit plan of care forms to DHS.

(e) Participants may be enrolled in only one waiver program at a time. Participants may not receive both DB-MD waiver services and other Medicaid community care services at the same time.

(f) Individuals residing in a Texas nursing facility who are enrolled in Medicaid will be approved for Community Care services if they request services while residing in a Texas nursing facility and meet all eligibility criteria for Community Care services. If an individual is discharged from the nursing facility for a community setting before being determined eligible for Medicaid nursing facility services and Community Care services, the individual will be denied Community Care services unless these services are part of an entitlement program. Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.

§42.12. Changes in Deaf-Blind Services.

If the estimated cost of the Deaf-Blind Medicaid Waiver services necessary to adequately meet the needs of the participant to live in the most integrated setting in the community exceeds the Deaf-Blind Medicaid Waiver cost ceiling, the Texas Department of Human Services (DHS) may not disallow or jeopardize Deaf-Blind community services for that person. Requests for changes to the participant's Individual Service Plan (ISP) will be considered if there is a change in the participant's medical condition, functional needs or environment, or a change in the caregiver's support/third-party resources that have been providing services to the participant, or when a Deaf-Blind service or support (either a new service or expansion of existing service on a temporary or long-term basis) is needed to adequately support a participant living in the most integrated setting in the community. If there is a need for a reimbursable waiver service that would have caused the participant to exceed the individual cost ceiling if purchased by the program before the implementation of Rider 7 of the 77th Appropriations Act, this service will also be considered for approval. The Deaf-Blind Program Consultant will make the determination to approve or deny each request. The determination will be made on the basis of the necessity of the requested service, the participant's disability or medical condition, and the necessity of the service to adequately support the participant living in the most integrated setting possible in the community.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2002.

TRD-200202403
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 7, 2002
Proposal publication date: November 16, 2001
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Department of Human Services (DHS) adopts amendments to §§48.2103, 48.2111, 48.6098, and new §48.2123 and §48.6099, in its Community Care for Aged and Disabled chapter. The amendments to §48.2103 and §48.6098, and new §48.2123 and §48.6099 are adopted with changes to the proposed text published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9370). The amendment to §48.2111 is adopted without changes to the proposed text published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9370).

DHS is adopting related policy in Chapters 42 and 50 in this issue of the *Texas Register*.

Justification for the amendments and new sections is to comply with riders 7(b)(2) and 37 to the DHS appropriations in the Appropriations Act, 77th Legislative Session, that allow DHS to transfer nursing facility funds to the Community Care program to cover the cost in the shift in services. These riders require DHS to not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers if those services are required for the individual to live in the most integrated setting possible. The sections also establish the basis for approving or denying requests for changes in the waiver client's service plan.

DHS received comments from United Cerebral Palsy of Texas, the Arc of Texas, the Coalition of Texans with Disabilities, and the Disability Policy Consortium. A summary of the comments and the department's responses follow.

Comment: All four agencies recommended changes to the proposed rules concerning Rider 7. They requested language clarifying how changes to the waiver service plan are handled. Also suggested were ways to avoid jeopardizing community services if the estimated cost of the services exceeds the cost ceiling.

Response: DHS agrees and changed §48.2123 and §48.6099.

Comment: All four agencies recommended changes to the proposed rules, for all four waiver programs, regarding the wording of the Rider 37 rule. They suggested that in addition to providing information to nursing facility new admissions and nursing facility discharges on Community Care services, an application for Community Care services also be provided.

Response: DHS disagrees. DHS does not require an application for Community Care services. Individuals may request Community Care services at any time and are placed on an interest list on a first-come, first-served basis, if they request waiver services. If other Community Care entitlement services are requested, the eligibility process will begin. In addition, Texas Health and Human Services Commission (HHSC) §351.15 requires DHS to provide each long-term care client information about long-term care services appropriate to his needs. DHS complies with this rule.

Comment: Two agencies asked what the appeal process would look like if the Community Based Alternatives (CBA) or the Consolidated Waiver Program (CWP) case manager denies the client's request to exceed the individual cost ceiling.

Response: The process is the same as in any other adverse action against the client. The client is given a written notice of the denial on the denial of services form, which also explains a client's appeal rights. The client may appeal the denial verbally to the case manager or by completing the back of the denial of service form and sending it back to the case manager. The DHS hearing officer then sets a hearing date and informs the client of the date. The hearing officer makes client rights available to all clients requesting a fair hearing.

In addition to the changes indicated above, DHS made minor editorial changes to §§48.2103, 48.2123, 48.6098, and 48.6099 in order to improve clarity and understanding.

SUBCHAPTER C. MEDICAID WAIVER PROGRAM FOR PERSONS WITH RELATED CONDITIONS

40 TAC §§48.2103, 48.2111, 48.2123

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§48.2103. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for waiver program services, an applicant must:

(1) be eligible for Supplemental Security Income (SSI) benefits; or

(2) have been eligible for and received SSI benefits and continue to be eligible for Medicaid as a result of protective coverage mandated by federal law; or

(3) be under age 18 and reside with parents or spouses, and

(A) be eligible for Medicaid benefits only if institutionalized,

(B) meet the SSI criteria for disability, as documented on the appropriate DHS forms,

(C) meet the SSI criteria for institutional deeming,

(D) have income and resources which meet the requirements of the SSI program, and

(E) receive waiver program services for persons with related conditions; or

(4) be an individual who would be financially eligible for Medicaid if residing in a Medicaid- certified institution. For these individuals, the policies specified in subparagraphs (A) and (B) apply.

(A) Spousal impoverishment provisions.

(i) For waiver participants with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act, and as specified in the Medicaid State Plan and subsection (a) of this section.

(ii) After the participant is determined to be eligible for Medicaid, DHS determines the amount of the participant's income applicable to payment.

(iii) To determine the amount of the participant's income applicable to payment, DHS uses the same methodology as if the participant were residing in an institution, except that the personal needs allowance is equal to the institutional cap.

(iv) DHS applies post-eligibility treatment of income rules to individuals eligible under a special income level, as specified in 42 Code of Federal Regulations 435.726, for use only by states that do not use the 209(b) option. For individuals receiving home and community-based services who are subject to the post-eligibility treatment of income rules, the Medicaid payment to the provider for home and community-based services will be reduced by the amount that remains after deducting the appropriate amounts from the individual's income. The DHS Copayment Worksheet form is used to calculate the client copayment amount.

(B) Calculation of participant copayment.

(i) A participant who is financially eligible based on the special institutional income limit must share in the cost of waiver services. The method for determining the participant copayment is specified in this subparagraph and is documented on DHS's Medical Assistance Only Worksheet form. When calculating the copayment amount for a participant with income that exceeds the SSI federal benefit rate, DHS deducts the following:

(I) the cost of the participant(s) maintenance needs, which must equal the special institutional income limit for eligibility under the Texas Medicaid program;

(II) the cost of the maintenance needs of the participant's dependent children. This amount is equivalent to the Aid to Families with Dependent Children (AFDC) program basic monthly grant for children or for a spouse with children, using the recognizable needs amount in the AFDC Budgetary Allowance Chart;

(III) the costs incurred for medical or remedial care that are necessary, but not covered by Medicare, Medicaid, or any other third party. This includes the cost of health insurance premiums, deductibles, and coinsurance; and

(IV) the cost of the maintenance needs of the participant's spouse. This amount is equivalent to the amount of the SSI federal benefit rate, less the spouse's own income.

(ii) The copayment amount is the participant's remaining income after all allowable expenses have been deducted. The copayment amount is applied only to the cost of home and community-based services which are funded through the Community Living Assistance and Support Services (CLASS) waiver program and specified on the participant's individual plan of care. The copayment amount must not exceed the cost of services actually delivered.

(iii) Participants must pay the copayment amount to the provider contracted to deliver authorized waiver services; or

(5) be an individual under age 19:

(A) for whom the Texas Department of Protective and Regulatory Services (TDPRS) assumes financial responsibility for, in whole or in part (not to exceed level II foster care payment), and

(B) who is being cared for in a foster care home licensed or certified and supervised by:

(i) TDPRS, or

(ii) a licensed public or private nonprofit child placing agency; or

(6) be a member of a family that receives Medicaid as a result of qualifying for AFDC.

(b) To be determined eligible by DHS for the waiver program services, participants must also meet the following requirements:

(1) Participants must meet the intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC VIII) level-of-care criteria as determined by the Texas Department of Health (TDH) according to applicable state and federal regulations, and as verified by a current level of care assessment.

(A) A preadmission level of care assessment by TDH expires 90 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an ICF-MR/RC VIII or another waiver program provider, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the level-of- care assessment.

(B) Re-evaluation of ICF-MR level-of-care criteria is performed annually by the Texas Department of Health using the same criteria as used initially. An initial re-evaluation of level of care must be performed no later than 364 calendar days from the date of enrollment. Subsequent level-of-care re-evaluations must be performed no later than 364 calendar days from the effective date of the prior level-of-care assignment.

(C) Any gaps in the level-of-care coverage periods result in loss of payment to the provider.

(2) Applicants must live in the contracted provider's geographic catchment area or must move into the geographic catchment area within 120 days from the date the applicant's name is removed from the waiting list and the applicant begins the Community Living Assistance and Support Services (CLASS) enrollment process.

(3) Applicants must have an individual plan of care for home and community-based services, developed by the interdisciplinary team composed of a case management service provider and other appropriate professional staff who meet the qualifications specified in the waiver request. The individual plan of care for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration.

(A) The individual plan of care for home and community-based services must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver program services authorized on the individual plan of care are necessary to avoid ICF-MR/RC VIII institutional placement and are appropriate to meet the applicant's needs in the community.

(B) The individual plan of care for home and community-based services must be approved by DHS and updated by the provider at least annually. Any gaps in the coverage periods of the individual plan of care approved by DHS result in loss of payment to the provider.

(c) The estimated annual cost of the applicant's individual plan of care for a period of 364 days from the initial enrollment for home and community-base services must not exceed 125% of the average cost of institutional care in an ICF-MR/RC VIII facility.

(d) Enrollment into this waiver program is limited to the number of participants approved by Centers for Medicare and Medicaid Services (CMS) or the availability of state funding.

(e) Participants may be enrolled in only one waiver program at a time. Participants may not receive both CLASS waiver services and other DHS community care services at the same time.

(f) Individuals residing in a Texas nursing facility who are enrolled in Medicaid will be approved for Community Care services if they request services and meet all eligibility criteria for Community Care services. If an individual is discharged from the nursing facility to a community setting before being determined eligible for Medicaid nursing facility services and Community Care services, the individual will be denied Community Care services unless these services are part of an entitlement program. Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.

§48.2123. Changes in Community Living Assistance and Support Services (CLASS) Services.

(a) If the estimated cost of the CLASS services necessary to adequately meet the needs of the participant to live in the most integrated setting in the community exceeds the CLASS cost ceiling, the Texas Department of Human Services (DHS) may not disallow or jeopardize CLASS community services for that person. Requests for changes to the participant's Individual Service Plan (ISP) will be considered for approval if there is a change in the participant's medical condition, functional needs or environment, or a change in the caregiver's support/third-party resources that have been providing services to the participant, or when a CLASS service or support (either a new service or expansion of existing service on a temporary or long-term basis) is needed to adequately support a participant living in the most integrated setting in the community. If there is a need for a reimbursable waiver service that would have caused the participant to exceed the individual cost ceiling if purchased by the program before the implementation of Rider 7 of the 77th Appropriations Act, this service will also be considered for approval.

(b) The interdisciplinary team will make the determination to approve or deny each request. The determination will be made on the basis of the necessity of the requested service, the participant's disability or medical condition, and the necessity of the service to adequately support the participant living in the most integrated setting possible in the community.

(c) The CLASS DHS Program Consultant must also provide approval for changes to the participant's ISP that cause the plan to exceed 125% of the average cost of institutional care in an ICF MR/RC VIII facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2002.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6098, §48.6099

The amendment and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§48.6098. Circumstances Requiring Denial of Services with Advance Notice.

(a) If one or more of the circumstances specified in paragraphs (1) through (10) of this subsection occur, the Community Based Alternatives (CBA) provider agency must provide written documentation to the Texas Department of Human Services (DHS) case manager within two DHS workdays of the occurrence to support a recommendation for denial of CBA services. Advance notice is defined in §48.6002 of this title (relating to Community Based Alternatives (CBA) Definitions).

(1) The participant leaves the state for more than 90 days. DHS will retain authority to extend this time in extraordinary circumstances.

(2) The participant has been legally confined or has resided in an institutional setting for longer than 120 days. An institution includes legal confinement, an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate care facility for persons with mental retardation/related conditions (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances.

(3) The participant is not financially eligible for Medicaid benefits.

(4) The participant does not meet the medical necessity criteria (MN) for nursing facility care.

(5) Home and community support services providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical and nursing needs cannot be met adequately in the participant's residence.

(6) The participant or someone in the participant's home refuses to comply with mandatory program requirements, including the determination of eligibility and/or the monitoring of service delivery.

(7) The participant fails to pay his room and board expenses or copayment in the adult foster care (AFC) or assisted living/residential care (AL/RC) setting.

(8) The participant fails to pay his qualified income trust copayment.

(9) The situation, participant, or someone in the participant's home is hazardous to the health and safety of the service provider, but there is no immediate threat to the health or safety of the provider.

(10) The participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

(b) The supporting documentation must include a description of the interventions that have occurred prior to the decision to recommend the denial of services. The documentation must justify the reasons for denial and describe the strategies, outcomes, and negotiations with the participant in accordance with the program policies in the provider manual.

(c) If the DHS case manager determines the documentation supports initiation of denial, the case manager provides written notification of denial to the participant and CBA provider agency within two DHS workdays. The written notification must specify the reason for denial, the effective date of denial, the regulatory reference, and provide written notice of the right to appeal.

(d) If the participant appeals the notification of denial within 10 days of written notification, the CBA provider agency continues CBA services until notification of the decision by the DHS hearing officer. The CBA provider agency must not reduce waiver services until the outcome of the appeal is known.

§48.6099. Changes in CBA Services.

(a) If the estimated cost of the Community Based Alternatives (CBA) services necessary to adequately meet the needs of the participant to live in the most integrated setting in the community exceeds the CBA cost ceiling, the Texas Department of Human Services (DHS) may not disallow or jeopardize CBA community services for that person. Requests for changes to the participant's Individual Service Plan (ISP) will be considered for approval if there is a change in the participant's medical condition, functional needs or environment, or a change in the caregiver's support/third-party resources that have been providing services to the participant, or when a CBA service or support (either a new service or expansion of existing service on a temporary or long-term basis) is needed to adequately support a participant living in the most integrated setting in the community. If there is a need for a reimbursable waiver service that would have caused the participant to exceed the individual cost ceiling if purchased by the program before the implementation of Rider 7 of the 77th Appropriations Act, this service will also be considered for approval. The DHS case manager will make the determination to approve or deny the request in consultation with the DHS registered nurse, as needed.

(b) The determination will be made on the basis of the necessity of the requested service, the participant's disability or medical condition, and the necessity of the service to adequately support the participant living in the most integrated setting possible in the community.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

40 TAC §§50.4, 50.36, 50.48, 50.50

The Texas Department of Human Services (DHS) adopts amendments to §§50.4, 50.36, 50.48, and new §50.50, in its §1915(c) Consolidated Waiver Program chapter. The amendments and new section are adopted with changes to the proposed text published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9372).

DHS is adopting related policy in Chapters 42 and 48 in this issue of the *Texas Register*.

Justification for the amendments and new section is to comply with riders 7(b)(2) and 37 to the DHS appropriations in the Appropriations Act, 77th Legislative Session, that allow DHS to transfer nursing facility funds to the Community Care program to cover the cost in the shift in services. These riders require DHS

to not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers if those services are required for the individual to live in the most integrated setting possible. The sections also establish the basis for approving or denying requests for changes in the waiver client's service plan.

DHS received comments from United Cerebral Palsy of Texas, the Arc of Texas, the Coalition of Texans with Disabilities, and the Disability Policy Consortium. A summary of the comments and the department's responses follow.

Comment: All four agencies recommended changes to the proposed rules concerning Rider 7. They requested language clarifying how changes to the waiver service plan are handled. Also suggested were ways to avoid jeopardizing community services if the estimated cost of the services exceeds the cost ceiling.

Response: DHS agrees and changed §50.50.

Comment: All four agencies recommended changes to the proposed rules, for all four waiver programs, regarding the wording of the Rider 37 rule. They suggested that in addition to providing information to nursing facility new admissions and nursing facility discharges on Community Care services, an application for Community Care services also be provided.

Response: DHS disagrees. DHS does not require an application for Community Care services. Individuals may request Community Care services at any time and are placed on an interest list on a first-come, first-served basis, if they request waiver services. If other Community Care entitlement services are requested, the eligibility process will begin. In addition, Texas Health and Human Services Commission (HHSC) §351.15 requires DHS to provide each long-term care client information about long-term care services appropriate to his needs. DHS complies with this rule.

Comment: Two agencies asked what the appeal process would look like if the Community Based Alternatives (CBA) or the Consolidated Waiver Program (CWP) case manager denies the client's request to exceed the individual cost ceiling.

Response: The process is the same as in any other adverse action against the client. The client is given a written notice of the denial on the denial of services form, which also explains a client's appeal rights. The client may appeal the denial verbally to the case manager or by completing the back of the denial of service form and sending it back to the case manager. The DHS hearing officer then sets a hearing date and informs the client of the date. The hearing officer makes client rights available to all clients requesting a fair hearing.

Comment: A comment regarding §50.4 suggested that a particular slot that is filled by a person coming to the CWP from a nursing facility should be based on what the individual is eligible for, not the last institutional setting in which he resided.

Response: DHS disagrees. If a Rider 37 client is enrolled in the CWP, he will not utilize a CWP slot, since the money follows the client from the nursing facility into the CWP.

In addition to the changes indicated above, DHS made minor editorial changes to §§50.4, 50.36, 50.48, and 50.50 in order to improve clarity and understanding.

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§50.4. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for Consolidated Waiver Program (CWP) services, an applicant or participant must:

(1) live in the pilot area;

(2) meet the financial eligibility criteria as defined in §50.6 of this title (relating to Financial Eligibility Criteria);

(3) not participate in other §1915(c) Medicaid waiver programs;

(4) have an individual service plan for home and community-based services developed by the interdisciplinary team (IDT). The individual service plan (ISP) for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration as defined in §50.16 of this title (relating to Individual Service Plan);

(5) have an ISP for home and community-based services with an estimated annual cost that does not exceed:

(A) 125% of the average aggregate cost of intermediate care facilities for individuals with mental retardation (ICF-MR) Level I, V, VI, and VIII for individuals who meet the ICF-MR level of care in accordance with §50.8(a)(2) of this title (relating to Individual Level-of-Care Criteria); or

(B) 150% of the individual's actual Texas Index for Level of Effort (TILE) payment rate for individuals with a nursing facility level-of-care in accordance with §50.8(a)(1) of this title (relating to Individual Level-of-Care Criteria);

(6) meet the level-of-care criteria as described in §50.8 of this title (relating to Individual Level-of-Care Criteria);

(7) have ongoing needs for waiver services whose projected costs, as indicated on the ISP, do not exceed the maximum service ceilings that follow:

(A) adaptive aids and medical supplies service category cannot exceed $10,000 per ISP plan year with DHS maintaining the right to exception;

(B) minor home modifications service category cannot exceed $7500 per individual per 7 years until age 21; then the minor home modifications service category cannot exceed $7500 (lifetime maximum) with a maximum of $300 for repairs per ISP year thereafter;

(C) respite care cannot exceed 45 days per individual per ISP year with DHS maintaining the right to exception; and

(D) dental care cannot exceed $1000 per ISP year;

(8) receive waiver services within 30 days after waiver eligibility is determined;

(9) meet the re-evaluation of institutional level-of-care criteria as performed annually by DHS using the same criteria as used initially;

(10) reside in his own home, in a licensed assisted living facility, in an adult foster care home, 24-hour residential habilitation or family surrogate services setting contracted with DHS to provide

CWP services, or in a foster home that meets the requirements for foster homes in accordance with 40 TAC §700.1501 (concerning Foster and Adoptive Home Development). CWP services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed assisted living facilities unless the facility is exempt in accordance with §50.30 of this title (relating to 24-Hour Residential Habilitation) as pertains to provider requirements for 24-hour residential habilitation; and

(11) choose waiver services as an alternative to institutional care.

(b) A preadmission level of care assessment expires 120 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an institution, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the approved ISP.

(c) Enrollment into this waiver program is limited to the number of participants approved by the Centers for Medicare and Medicaid Services (CMS) and funded by the State of Texas.

(d) Enrollment in the pilot is restricted to 200 participants with the following slot allocation:

(1) 50 slots for adults who meet the requirements for nursing facility care from the Community Based Alternatives (CBA) interest list;

(2) 50 slots for children who meet the requirements for nursing facility care from the Medically Dependent Children Program (MDCP) interest list;

(3) 25 slots for adults with mental retardation who meet the requirements for ICF-MR care level I from the Home and Community Based Services (HCS) interest list;

(4) 25 slots for children with mental retardation who meet the requirements for ICF-MR care level I from the HCS interest list;

(5) 25 slots for adults with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the Deaf Blind Multiple Disabilities (DBMD) interest list; and

(6) 25 slots for children with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the DBMD interest list.

(e) If the funding for CWP changes, the ratios for slot allocation will remain the same.

(f) For purposes of slot allocation, HCS means TDMHMR waiver currently operating in the pilot area.

(g) An individual who resides in a Texas nursing facility and is enrolled in Medicaid will be approved for Community Care services if the individual requests services while residing in a Texas nursing facility and meets all eligibility requirements for Community Care services.

(1) If the individual is discharged into the community before being determined eligible to receive nursing facility Medicaid and Community Care services, the individual will be denied Community Care services unless:

(A) The individual is next in line to fill a CWP slot as outlined in §50.32 of this title (relating to Maintenance of Interest Lists) and there is an opening within the number approved by CMS with available state funding; or

(B) The individual has requested Community Care services that are part of an entitlement program.

(2) Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.

§50.36. Circumstances Requiring Denial of Services with Advance Notice.

(a) Advance notice is a statement of the action the state intends to take provided in writing to the individual or the individual's authorized representative. Advance notice advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. The Texas Department of Human Services (DHS) must mail a notice to the participant at least 12 days before the day of action.

(b) The Consolidated Waiver Program (CWP) provider agency must provide written documentation to the DHS case manager within two DHS workdays of the occurrence to support a recommendation for denial of CWP services, if one or more of the circumstances occurs:

(1) the participant leaves the pilot area for more than 90 days. DHS retains the authority to extend this time in extraordinary circumstances;

(2) the participant has been legally confined or has resided in an institutional setting for longer than 120 days. An institution includes legal confinement, an acute-care hospital, a state hospital, a rehabilitation hospital, a state school, a nursing home, or an intermediate-care facility for persons with mental retardation/related conditions (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances;

(3) the participant is not financially eligible for Medicaid benefits;

(4) the participant does not meet the individual level-of-care criteria as set out in §50.8 of this title (relating to Individual Level-of-Care Criteria);

(5) Home and community support services agencies providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical and nursing needs cannot be met adequately in the participant's residence;

(6) the participant or someone in the participant's home refuses to comply with mandatory program requirements, including the determination of eligibility and/or the monitoring of service delivery;

(7) the participant fails to pay his room and board expenses or copayment in the adult foster care, assisted living/residential care, 24-hour residential habilitation, or family surrogate services setting;

(8) the participant fails to pay his qualified income trust copayment;

(9) the situation, participant, or someone in the participant's home is hazardous to the health and safety of the service provider, but there is no immediate threat to the health or safety of the provider; or

(10) the participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

(c) The supporting documentation must include a description of the interventions that have occurred before the decision to recommend the denial of services. The documentation must justify the reasons for denial and describe the strategies, outcomes, and negotiations

with the participant in accordance with the program policies outlined in CWP policy letters or the CWP provider manual.

(d) If the DHS case manager determines the documentation supports initiation of denial, the case manager provides written notification of denial to the participant and CWP provider agency within two DHS workdays of receipt of the provider's written recommendation for denial. The written notification must specify the reason for denial, along with the regulatory reference, the effective date of denial, and provide written notice of the right to appeal.

(e) If the participant appeals the notification of denial within 10 days of receiving written notification, the CWP provider agency continues CWP services until notification of the decision by the DHS hearing officer. The CWP provider agency must not reduce waiver services until the outcome of the appeal is known.

§50.48. Utilization Review.

(a) The Texas Department of Human Services (DHS) will review a proposed Individual Service Plan (ISP) and supporting documentation specified in §50.16 of this title (relating to Individual Service Plan for Waiver Services) upon receipt of a proposed ISP having a cost that exceeds 100% of:

(1) the Nursing Facility Texas Index for Level of Effort for individuals who meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §50.8(a)(1) of this title (relating to Individual Level of Care Criteria); or

(2) the estimated annualized average per capita cost for Intermediate Care Facility for Individuals with Mental Retardation (ICF/MR) services for individuals who meet the level-of-care criteria for an ICF/MR in accordance with §50.8(a)(2) of this title (relating to Individual Level of Care Criteria).

(b) DHS will review the proposed ISP to determine if the type and amount of CWP program services specified in the ISP are appropriate and supported by documentation specified in §50.16 of this title (relating to Individual Service Plan). After reviewing the proposed ISP and supporting documentation, DHS may request additional documentation. DHS will review any additional documentation submitted in accordance with its request. DHS may modify an ISP based on its review and approve the proposed ISP or send written notification that the proposed ISP has been approved with modifications, or DHS may deny an applicant CWP services due to the proposed ISP exceeding the cost ceiling as defined in §50.4(a)(5)(A)-(B) of this chapter (relating to Participant Eligibility Criteria).

§50.50. Changes in Consolidated Waiver Program (CWP) Services.

(a) If the estimated cost of the CWP services necessary to adequately meet the needs of the participant to live in the most integrated setting in the community exceeds the CWP cost ceiling, the Texas Department of Human Services (DHS) may not disallow or jeopardize CWP community services for that person. Requests for changes to the participant's Individual Service Plan (ISP) will be considered for approval if there is a change in the participant's medical condition, functional needs or environment, or in the caregiver's support/third-party resources that have been providing services to the participant, or when a CWP service or support (either a new service or expansion of existing service on a temporary or long-term basis) is needed to adequately support a participant living in the most integrated setting in the community.

(b) The DHS case manager will make the determination to approve or deny the request, in consultation with the DHS registered nurse, as needed, and will refer to §50.48 of this title (related to Utilization Review), if appropriate.

(c) The determination will be made on the basis of the necessity of the requested service, the participant's disability or medical condition, and the necessity of the service to adequately support the participant living in the most integrated setting possible in the community.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
SUBCHAPTER F. ENFORCEMENT

40 TAC §97.602

The Texas Department of Human Services (DHS) adopts an amendment to §97.602 without changes to the proposed text published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1994).

Justification for the amendment is to correct an error in the adoption published in the November 9, 2001, issue of the *Texas Register* (26 TexReg 9216).

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §142.017, which provides DHS with the authority to adopt rules relating to administrative penalties imposed on home and community support services agencies (HCSSAs).

The amendment implements the Health and Safety Code, §142.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2002.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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PART 2. TEXAS REHABILITATION COMMISSION

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

SUBCHAPTER D. PURCHASE OF GOODS AND SERVICES

40 TAC §106.105

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 106, §106.105, concerning purchase of goods and services by TRC, without changes to the proposed text as published in the December 21, 2001, issue of the *Texas Register*. The change is being adopted to correct an erroneous citation to the Human Resources Code in 40 TAC §106.105.

No comments were received regarding adoption of the proposed amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
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For further information, please call: (512) 424-4050

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SUBCHAPTER K. HISTORICALLY UNDERUTILIZED BUSINESSES

40 TAC §106.355

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 106, §106.355, concerning purchase of goods and services by TRC, without changes to the proposed text as published in the February 1, 2002, issue of the *Texas Register*. The change is being adopted to update for the new name of the Texas Building and Procurement Commission.

No comments were received regarding adoption of the proposed amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
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Proposal publication date: February 1, 2002
For further information, please call: (512) 424-4050

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40 TAC §106.357

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 106, §106.357, concerning purchase of goods and services by TRC, without changes to the proposed text as published in the February 1, 2002, issue of the *Texas Register*. The change is being adopted to update for the new name of the Texas Building and Procurement Commission.

No comments were received regarding adoption of the proposed amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
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Proposal publication date: February 1, 2002
For further information, please call: (512) 424-4050

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CHAPTER 117. SPECIAL RULES AND POLICIES

40 TAC §117.5

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 117, §117.5, concerning special rules and policies, without changes to the proposed text as published in the February 1, 2002, issue of the *Texas Register*. The change is being adopted to update for the new name of the Texas Building and Procurement Commission.

No comments were received regarding adoption of the proposed amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
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For further information, please call: (512) 424-4050

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §§57.3, 57.42, 57.56

The Automobile Theft Prevention Authority (ATPA) adopts amendments to §57.3 and §57.42 to update the reference to the ATPA's address and telephone number and to change the date the board's Advisory Committees will be abolished in §57.56. The amendments are adopted, without change to the proposed version, which was published in the *Texas Register*, on March 1, 2002 (27 TexReg. 1472). The text of the adopted rules will not be republished. The purpose of the amendments is to update the reference to the ATPA's address and telephone number and change the date the board's Advisory Committees will be abolished. The Government Code §2110.008 requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law, every four years. The amendment to §57.56 changes the date of abolishment to August 31, 2006. Adoption of this proposal will act as the Authority's approval of the continuation of these committees.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendments: §§57.3, 57.42 -Article 4413 (37), §6(a) §57.56-Article 4413(37), §6(a), Government Code §2110.008

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200202357
Susan Sampson
Director
Automobile Theft Prevention Authority
Effective date: May 6, 2002
Proposal publication date: March 1,2002
For further information, please call: (512) 374-5101

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Agency Rule Review Plans

Texas Health Care Information Council

Title 25, Part 16

Filed: April 22, 2002

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Texas Optometry Board

Title 22, Part 14

Filed: April 23, 2002

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Proposed Rule Reviews

Texas Department of Banking

Title 7, Part 2

The Texas Department of Banking, on behalf of the Finance Commission of Texas (commission), files this notice of intention to review Texas Administrative Code, Title 7, Chapter 21 (Trust Company Corporate Activities), specifically Subchapter G, comprised of §21.91 and §21.92 concerning charter amendments and certain changes in outstanding stock.

The commission undertakes its review of these rules pursuant to Government Code, §2001.039. The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to robin.robinson@banking.state.tx.us. Any changes to rules proposed as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for a separate 30-day comment period prior to final adoption or repeal by the commission.

TRD-200202495

Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: April 23, 2002

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 12, Payment of Fees.

This review of Chapter 12 is proposed in accordance with the requirements of Texas Government Code, §2001.039 (added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a)), which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 12, Payment of Fees, outlines applicability, penalties and interest on delinquent fees, and consistency of penalties and interest with the tax code. The chapter applies to those fees owed the state under the commission's jurisdiction. The chapter imposes an initial late penalty of 5%; an additional 5% if further delinquent; and interest on delinquent fees. However, penalties and/or interest may not exceed provisions in the Texas Tax Code and may be waived by the executive director for good cause.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 12 continue to exist. Chapter 12 implements rules for charging penalties and/or interest on delinquent fees in accordance with Texas Water Code, §5.701(a)(2), which requires the commission to "establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction."

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on whether the reasons for the rules in Chapter 12 continue to exist. Comments may be submitted to Patricia Durón, 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 2002-015-012- AD. Comments must be received in writing by 5:00 p.m., June 3, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200202513
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 23, 2002

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The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 40, Alternative Dispute Resolution Procedure. This review of Chapter 40 is proposed in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a), which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 40 provides for the procedures for the use of alternative dispute resolution (ADR) in resolving contested matters before the agency. This chapter contains provisions for the referral of a contested matter for ADR; the appointment and qualifications of mediators; the commencement of ADR proceedings; agreements reached during the proceedings; and confidentiality of communications in ADR procedures.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 40 continue to exist. The rules are needed to implement Texas Government Code, Chapter 2009, Alternative Dispute Resolution for Use by Governmental Bodies. Chapter 2009 was enacted specifically to establish the state policy that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using ADR procedures in appropriate aspects of the governmental body's operations and programs. Chapter 40 establishes procedures for the use of ADR in resolving contested matters before the agency.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on whether the reasons for the rules in Chapter 40 continue to exist. 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 2002-013-040-AD. Comments must be received in writing by 5:00 p.m., June 3, 2002. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

TRD-200202514
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 23, 2002

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Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (Board) files this notice of intent to review 31 TAC, Part 10, Chapter 368, Flood Mitigation Assistance Program, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist because it governs the Board's responsibilities for administering the program. The Board concurrently proposes amendments to §§368.1, 368.2, and 368.9. The amendments are proposed for clarification consistent with directives from the Federal Emergency Management Agency.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 368 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to suzanne.schwartz@twdb.state.tx.us or by fax @ 512/463-5580.

TRD-200202447
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: April 22, 2002

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Adopted Rule Review

Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board adopts the review of the following sections from Chapter 397, concerning general rules of practice and procedure, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The Texas Polygraph Examiners Board at their November 26, 2001 board meeting, determined that no changes were required to be made at this time to the chapter. The proposed review was published in the October 5, 2001 issue of the *Texas Register*.

§397.1. Definitions

§397.2. Applicability of Chapter

§397.3. Complaints

§397.4. Notice of Allegations and Opportunity To Respond

§397.5. Complaint Investigations

§397.6. Respondents Denied Licensure

§397.7. Complaint Officers

§397.8. Informal Conference

§397.9. Informal Disposition of Complaints

§397.10. Classification of Parties and Pleadings

§397.11. Appearances Personally or by Representative

§397.12. Conduct and Decorum

§397.13. Agreements To Be in Writing

§397.14. Computation of Time

§397.15. State Office of Administrative Hearings

§397.16. Availability of Administrative Hearing

§397.17. Notice of Administrative Hearing

§397.18. Answer or Response

§397.19. Location of Administrative Hearings

§397.20. Filing of Documents

§397.21. Form and Content of Pleadings

§397.22. Exhibits

§397.23. Amendments

§397.24. Service

§397.25. Texas Rules of Civil Procedure

§397.26. Prefiled Testimony

§397.27. Limitations on the Number of Witnesses in Administrative Proceedings

§397.28. Failure To Attend Hearing; Default Judgment

§397.29. Dismissal Without Hearing

§397.30. Proposals for Decision

§397.31. Form and Content of Briefs, Exceptions, and Replies

§397.32. Final Decisions and Orders

§397.33. Reporters and Transcript

No Comments on the review were received.

This concludes the review of Chapter 397.

TRD-200202474
Frank DiTucci
Executive Director
Polygraph Examiners Board
Filed: April 22, 2002

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: 16 TAC §7.110(c)

RAILROAD COMMISSION OF TEXAS

Registration and Personal Contact Form

Date	Name & Address	Name & address of party you represent	Have you received or do you expect to receive money, financial benefit or anything of value?	Description of subject matter	Action requested, if any

Figure: 16 TAC §33.23(a)

Liquor Permits	
Agent's Permit	$77.00 [~~$36.00~~]
Airline Beverage Permit	$155.00 [~~$71.00~~]
Beverage Cartage Permit	$122.00 [~~$56.00~~]
Bonded Warehouse Permit	$49.00 [~~$22.00~~]
Bonded Warehouse Permit (Dry Area)	$49.00 [~~$22.00~~]
Brewer's Permit	$310.00 [~~$143.00~~]
Brewpub License	$122.00 [~~$56.00~~]
Carrier's Permit	$111.00 [~~$51.00~~]
Caterer's Permit	$88.00 [~~$41.00~~]
Daily Temporary Mixed Beverage Permit (Per Day)	$122.00 [~~$56.00~~]
Daily Temporary Private Club Registration Permit	$122.00 [~~$56.00~~]
Distiller's & Rectifier's Permit	$111.00 [~~$51.00~~]
Food and Beverage Certificate	$166.00 [~~$76.00~~]
Industrial Permit	$181.00 [~~$84.00~~]
Local Cartage Permit	$77.00 [~~$36.00~~]
Local Distributor's Permit	$88.00 [~~$41.00~~]
Local Industrial Alcohol Manufacturer's Permit	$100.00 [~~$46.00~~]
Manufacturer's Agent's Permit	$77.00 [~~$36.00~~]
Market Research Packager's Permit	$55.00 [~~$25.00~~]
[~~Medicinal Permit~~]	[~~0~~]
Minibar Permit	$155.00 [~~$71.00~~]
Mixed Beverage Permit	$166.00 [~~$76.00~~]
Mixed Beverage Late Hours Permit	$133.00 [~~$61.00~~]
Non Resident Brewer's Permit	$55.00 [~~$25.00~~]
Non Resident Seller's Permit	$122.00 [~~$56.00~~]
Package Store Permit	$88.00 [~~$41.00~~]

Package Store Tasting Permit	$33.00 [~~$15.00~~]
Wine Only Package Store Permit	$88.00 [~~$41.00~~]
Passenger Train Beverage Permit	$137.00 [~~$63.00~~]
[~~Physician's Permit~~]	[~~-0-~~]
Private Carrier's Permit	$100.00 [~~$46.00~~]
Private Club Exemption Certificate Permit	-0-
Private Club Registration Permit	$221.00 [~~$102.00~~]
Private Club Beer and Wine Permit	$155.00 [~~$71.00~~]
Private Club Late Hours Permit	$133.00 [~~$61.00~~]
Private Storage Permit	$33.00 [~~$15.00~~]
Temporary Charitable Auction Permit	$77.00 [~~$36.00~~]
Public Storage Permit	$33.00 [~~$15.00~~]
Wholesaler's Permit	$243.00 [~~$112.00~~]
General Class B Wholesaler's Permit	$243.00 [~~$112.00~~]
Local Class B Wholesale's Permit	$243.00 [~~$112.00~~]
Wine and Beer Retailer's Permit Railway Car	$100.00 [~~$46.00~~]
Wine and Beer Retailers' Permit Excursion Boat	$104.00 [~~$48.00~~]
Wine Bottler's Permit	$243.00 [~~$112.00~~]
Winery Permit	$332.00 [~~$153.00~~]
Winery Storage Permit	$66.00 [~~$31.00~~]
Beer Licenses	
Agent's Beer License	$77.00 [~~$36.00~~]
Branch Distributor's License	$243.00 [~~$112.00~~]
General Distributor's License	$243.00 [~~$112.00~~]
Importer's License	$177.00 [~~$81.00~~]
Importer's Carrier's License	$66.00 [~~$31.00~~]
Local Distributor's License	$199.00 [~~$92.00~~]

Manufacturer's License	$310.00 [~~$143.00~~]
Manufacturer's Warehouse License	$221.00 [~~$102.00~~]
Non Resident Manufacturer's License	$122.00 [~~$56.00~~]
Beer Retailer's Off Premise License	$88.00 [~~$41.00~~]
Beer Retailer's On Premise License	$88.00 [~~$41.00~~]
Retail Dealer's On Premise Late Hours License	$88.00 [~~$41.00~~]
Storage License	$33.00 [~~$15.00~~]
Temporary License	$77.00 [~~$36.00~~]
Wine and Beer Retailer's Permit	$88.00 [~~$41.00~~]
Wine and Beer Retailer's Off Premise Permit	$88.00 [~~$41.00~~]

Figure: 31 TAC §65.331

Frogs and Toads

[~~Cope's gray treefrog *(Hyla chrysoscelis)*~~]

[~~Canyon treefrog *(Hyla arenicolor)*~~]

[~~Gray treefrog *(Hyla versicolor)*~~]

[~~Green treefrog *(Hyla cinerea)*~~]

[~~Squirrel treefrog *(Hyla squirella)*~~]

Couch's spadefoot (*Scaphiopus couchi*)

[~~Plains spadefoot (*Scaphiopus bombifrons*)~~]

[~~Northern cricket frog *(Acris crepitans crepitans)*~~]

[~~Blanchard's cricket frog *(Acris crepitans blanchardi)*~~]

[~~Coastal cricket frog *(Acris crepitans paludicola*)~~]

[~~Great plains toad *(Bufo cognatu)*~~)]

[~~Eastern green toad *(Bufo debilis debilis*)~~]

Western green toad *(Bufo debilis insidior*)

[~~Red-spotted toad *(Bufo punctatus*)~~]

Texas toad *(Bufo speciosus*)

[~~Gulf Coast toad *(Bufo valliceps valliceps*)~~]

[~~Southwestern Woodhouse's toad *(Bufo woodhousei australis*)~~]

[~~East Texas Toad *(Bufo woodhousei velatus)*~~]

[~~Woodhouse's toad *(Bufo woodhousei woodhousei*)~~]

Bull frog *(Rana catesbeiana)*

[~~Southern leopard frog *(Rana sphenocephala)*~~]

[~~Bronze frog *(Rana clamitans clamatans)*~~]

[~~Pig frog *(Rana grylio)*~~]

Salamanders

Barred tiger salamander (*Ambystoma tigrinum mavortium)*

[~~Eastern tiger salamander *(Ambystoma tigrinum tigrinum)*~~]

[~~Marbled salamander *(Ambystoma opacum)*~~]

[~~Mole salamander *(Ambystoma talpoideum)*~~]

[~~Spotted salamander *(Ambystoma maculatum)*~~]

Turtles

Desert (Western) box turtle *(Terrapene ornata luteola)*

Ornate box turtle *(Terrapene ornata ornata)*

Three-toed (Eastern) box turtle *(Terrapene carolina triunguis)*

[~~Cagle's map turtle *(Graptemys caglei)*~~]

[~~Mississippi map turtle *(Graptemys pseuogeographica kohnii)*~~]

[~~Ouachita map turtle (*Graptemys pseudogeographica ouachitensis)*~~]

[~~Sabine map turtle (*Graptemys pseudogeographica sabinensis)*~~]

Texas map turtle (*Graptemys versa)*

Yellow mud turtle *(Kinosternon flavescens flavescens)*

[~~Mississippi (Eastern) mud turtle *(Kinosternon subrubrum hippocrepis)*~~]

[~~Western chicken turtle *(Deirochelys reticularia miaria)*~~]

Red-eared slider *(Trachemys scripta elegans)*

Midland smooth softshell turtle *(Apalone muticus muticus) (Trionyx muticus)* (old name)

Texas spiny softshell *(Apalone spiniferus emoryi), (Trionyx spiniferus)* (old genus name)

[~~Guadalupe spiny softshell *(Apalone spiniferus guadalupensis)*~~]

Western spiny softshell *(Apalone spiniferus hartwegi)*

[~~Pallid spiny softshell *(Apalone spiniferus pallidus)*~~]

[~~Metter's river cooter *(Pseudemys concinna metteri)*~~]

Texas river cooter *(Pseudemys texana)*

[~~Western painted turtle *(Chrysemys picta bolli)*~~]

[~~Southern painted turtle *(Chrysemys picta dorsalis)*~~]

[~~Common snapping turtle *(Chelydra serpentina serpentina)*~~]

[~~Texas diamondback terrapin *(Malaclemys terrapin littoralis)*~~]

Lizards

[~~Texas alligator lizard (*Gerrhonotus liocephalus infernalis)*~~]

[~~Western slender glass lizard *(Ophisaurus attenuatus attenuatus)*~~]

[~~Green anole *(Anolis carolinensis)*~~]

Texas banded gecko (*Coleonyx brevis*)

Southwestern earless lizard (*Cophosaurus texanus scitulus)*

[~~Texas earless lizard (*Cophosaurus texanus scitulus)*~~]

Eastern collared lizard (*Crotaphytus collaris collaris)*

Chihuahuan collared lizard *(Crotaphytus collaris fuscus)*

Crevice spiny lizard *(Sceloporus poinsettii poinsettii)*

[~~Texas spiny lizard (*Sceloporus olicavous)*~~]

[~~Twin-spotted (Desert)] spiny lizard *(Sceloporus magister bimaculatus)*~~]

[~~Northern (Eastern)] fence lizard (*Sceloporus undulatus hyacinthinus)*~~]

[~~Northern prairie lizard *(Sceloporus undulatus garmani)*~~]

[~~Southern Prairie lizard *(Sceloporus undulatus consobrinus)*~~]

[~~Big Bend canyon lizard *(Sceloporus merriami annulatus)*~~]

[~~Presidio canyon lizard *(Sceloporus merriami longipunctatus)*~~]

[~~Merriam's canyon lizard *(Sceloporus merriami merriami)*~~]

[~~Longnose leopard lizard *(Gambelia wislizeni wislizeni)*~~]

[~~Eastern tree lizard *(Urosaurus ornatus ornatus)*~~]

[~~Big Bend tree lizard *(Urosaurus ornatus schmidti)*~~]

Desert side-blotched lizard (*Uta stansburiana stejnegeri)*

Roundtail horned lizard *(Phrynosoma modestum)*

[~~Broadhead skink (*Eumeces laticeps)*~~]

[~~Great plains skink *(Eumeces obsoletus)*~~]

[~~Ground skink *(Scincella lateralis)*~~]

[~~Gray-checkered whiptail (*Cnemidophorus dixoni)*~~]

[~~Chihuahuan spotted whiptail *(Cnemidophorus exsanguis)*~~]

[~~Texas spotted whiptail *(Cnemidophorus gularis gularis)*~~]

[~~Plateau spotted whiptail *(Cnemidophorus gularis septemvittatus)*~~]

[~~Trans-Pecos striped whiptail *(Cnemidophorus inornatus heptagrammus)*~~]

[~~Laredo striped whiptail *(Cnemidophorus laredoensis)*~~]

Marbled whiptail *(Cnemidophorus marmoratus)*

[~~New Mexico whiptail *(Cnemidophorus neomexicanus)*~~]

[~~Colorado checkered whiptail *(Cnemidophorus tesselatus)*~~]

[~~Desert grassland whiptail *(Cnemidophorus uniparens)*~~]

[~~Six-lined racerunner (*Cnemidophorus sexlineatus sexlineatus)*~~]

[~~Prairie-lined racerunner *(Cnemidophorus sexlineatus viridis)*~~]

Snakes

[~~Baird's rat snake (*Elaphe bairdi*)~~]

[~~Texas rat snake (*Elaphe obsoleta lindheimeri*)~~]

[~~Trans-Pecos rat snake (*Elaphe subocularis*)~~]

[~~Great Plains rat snake (*Elaphe guttata emoryi*)~~]

[~~Rough green snake (*Opheodrys aestivus*)~~]

[~~Rough earth snake (*Virginia striatula*)~~]

[~~Western smooth earth snake (*Virginia valeriae elegans*)~~]

[~~Ground snake (*Sonora semiannulata*)~~]

[~~Yellowbelly water snake (*Nerodia erythrogaster flavigaster*)~~]

[~~Gray-banded kingsnake (*Lampropeltis alterna*)~~]

[~~Louisiana milk snake (*Lampropeltis triangulum amaura*)~~]

[~~Mexican milk snake (*Lampropeltis triangulum annulata*)~~]

[~~New Mexico milk snake (*Lampropeltis triangulum celaenops*)~~]

[~~Central plains milk snake (*Lampropeltis triangulum gentilis*)~~]

[~~Speckled kingsnake (*Lampropeltis getulus holbrooki*)~~]

[~~Desert kingsnake (*Lampropeltis getulus splendida*)~~]

[~~Bullsnake (*Pituophis melanoleucus sayi*)~~]

[~~Texas longnose snake (*Rhinocheilus lecontei tessallatus*)~~]

[~~Eastern coachwhip (*Masticophis flagellum flagellum*)~~]

[~~Western coachwhip (*Masticophis flagellum testaceus*)~~]

[~~Central Texas whipsnake (*Masticophis taeniatus girardi*)~~]

[~~Desert Striped whipsnake (*Masticophis taeniatus taeniatus*)~~]

[~~Eastern garter snake (*Thamnophis sirtalis sirtalis*)~~]

[~~Texas garter snake (*Thamnophis sirtalis annectans*)~~]

[~~New Mexico garter snake (*Thamnophis sirtalis dorsalis*)~~]

Plains garter snake (*Thamnophis radix haydenii*)

[~~Checkered garter snake (*Thamnophis marcianus marcianus*)~~]

[~~Eastern blackneck garter snake (*Thamnophis cyrtopsis ocellatus*)~~]

[~~Western blackneck garter snake (*Thamnophis cyrtopsis cyrtopsis*)~~]

[~~Western ribbon snake (*Thamnophis proximus proximus*)~~]

[~~Redstripe ribbon snake (*Thamnophis proximus rubrilineatus*)~~]

[~~Gulf Coast ribbon snake (*Thamnophis proximus orarius*)~~]

[~~Arid land ribbon snake (*Thamnophis proximus diabolicus*)~~]

[~~Mississippi ringneck snake (*Diadophis punctatus strictogenys*)~~]

Prairie ringneck snake (*Diadophis punctatus arnyi*)

[~~Regal ringneck snake (*Diadophis punctatus regalis*)~~]

[~~Kansas glossy snake (*Arizona elegans elegans*)~~]

[~~Texas glossy snake (*Arizona elegans arenicola*)~~]

[~~Painted desert glossy snake (*Arizona elegans philipi*)~~]

[~~Plains (western)~~] ~~hognose snake (*Heterodon nasicus nasicus*)~~]

[~~Dusty hognose snake (*Heterodon nasicus gloydi*)~~]

[~~Mexican hognose snake (*Heterodon nasicus kennerlyi*)~~]

[~~Eastern hognose snake (*Heterodon platyrhinos*)~~]

[~~Mountain patchnose snake (*Salvadora grahamiae grahamiae*)~~]

[~~Texas patchnose snake (*Salvadora grahamiae lineata*)~~]

[~~Big Bend patchnose snake (*Salvadora deserticola*)~~]

[~~Texas coral snake (*Micrurus fulvius tenere*)~~]

[~~Southern copperhead (*Agkistrodon contortrix contortrix*)~~]

[~~Broad-banded copperhead (*Agkistrodon contortrix laticinctus*)~~]

[~~Trans-Pecos copperhead (*Agkistrodon contortrix pictigaster*)~~]

[~~Western cottonmouth (*Agkistrodon piscivorus leucostoma*)~~]

Western diamondback rattlesnake (*Crotalus atrox*))

[~~Prairie rattlesnake (*Crotalus viridis viridis*)~~]

[~~Mottled rock rattlesnake (*Crotalus lepidus lepidus*)~~]

[~~Banded rock rattlesnake (*Crotalus lepidus klauberi*)~~]

[~~Northern blacktail rattlesnake (*Crotalus molossus molossus*)~~]

[~~Western massasauga (*Sistrurus catenatus tergeminus*)~~]

[~~Desert massasauga (*Sistrurus catenatus edwardsii*)~~]

[~~Pygmy rattlesnake (*Sistrurus miliarius*)~~]

Mammals

[~~Order Chiroptera - BATS~~]

[~~Brazilian Free-tailed Bat - (*Tadarida brasiliensis*)~~]

Order Lagomorpha - RABBITS

Black-tailed Jackrabbit - (*Lepus Californicus*)

Order Rodentia - RODENTS

Squirrels

[~~Texas Antelope Squirrel - (*Ammospermophilus interpres*)~~]

[~~Mexican Ground Squirrel - (*Spermophilus mexicanus*)~~]

[~~Spotted Ground Squirrel - (*Spermophilus spilosoma*)~~]

[~~Thirteen-lined Ground Squirrel - (*Spermophilus tridecemlineatus*)~~]

[~~Rock Squirrel - (*Spermophilus variegatus*)~~]

Black-tailed Prairie Dog - (*Cynomys ludovicianus*)

[~~Eastern Flying Squirrel - (*Glaucomys volans*)~~]

[~~Pocket Gophers~~]

[~~Botta's Pocket Gopher - (*Thomomys bottae*)~~]

[~~Desert Pocket Gopher - (*Geomys arenarius*)~~]

[~~Attwater's Pocket Gopher - (*Geomys attwateri*)~~]

[~~Baird's Pocket Gopher - (*Geomys breviceps*)~~]

[~~Plains Pocket Gopher - (*Geomys bursarius*)~~]

[~~Jones' Pocket Gopher - (*Geomys knoxjonesi*)~~]

[~~Texas Pocket Gopher - (*Geomys personatus*)~~]

[~~Llano Pocket Gopher - (*Geomys texensis*)~~]

[~~Yellow-faced Pocket Gopher (*Cratogeomys castanops*)~~]

[~~Pocket Mice~~]

[~~Pains Pocket Mouse - (*Perognathus flavescens*)~~]

[~~Silky Pocket Mouse - (*Perognathus flavus*)~~]

[~~Mrriam's Pocket Mouse - (*Perognathus merriami*)~~]

[~~Hispid Pocket Mouse - (*Chaetodipus hispidus*)~~]

[~~Rock Pocket Mouse - (*Chaetodipus intermedius*)~~]

[~~Nelson's Pocket Mouse - (*Chaetodipus nelsoni*)~~]

[~~Desert Pocket Mouse - (*Chaetodipus penicillatus*)~~]

[~~Gulf Coast Kangaroo Rat - (*Dipodomys compactus*)~~]

[~~Texas Kangaroo Rat - (*Dipodomys elator*)~~]

[~~Merriam's Kangaroo Rat - (*Dipodomys merriami*)~~]

[~~Ord's Kangaroo Rat - (*Dipodomys ordii*)~~]

[~~Banner-tailed Kangaroo Rat - (*Dipodomys spectabilis*)~~]

[~~Mexican Spiny Pocket Mouse - (*Liomys irroratus*)~~]

[~~Mice and Rats~~]

[~~Fulvous Harvest Mouse - (*Reithrodontomys fulvescens*)~~]

[~~Eastern Harvest Mouse - (*Reithrodontomys humulis*)~~]

[~~Western Harvest Mouse - (*Reithrodontomys megalotis*)~~]

[~~Plains Harvest Mouse - (*Reithrodontomys montanus*)~~]

[~~Texas Mouse - (*Peromyscus attwateri*)~~]

[~~Brush Mouse - (*Peromyscus boylii*)~~]

[~~Cactus Mouse - (*Peromyscus eremicus*)~~]

[~~Cotton Mouse - (*Peromyscus gossypinus*)~~]

[~~White-footed Mouse - (*Peromyscus leucopus*)~~]

[~~Deer Mouse - (*Peromyscus maniculatus*)~~]

[~~Northern Rock Mouse - (*Peromyscus nasutus*)~~]

[~~White-ankled Mouse - (*Peromyscus pectoralis*)~~]

[~~Pinon Mouse - (*Peromyscus truei*)~~]

[~~Golden Mouse - (*Ochrotomys nuttalli*)~~]

[~~Northern Pygmy Mouse - (*Baiomys taylori*)~~]

[~~Mearns' Grasshopper Mouse - (*Onychomys arenicola*)~~]

[~~Northern Grasshopper Mouse - (*Onychomys leucogaster*)~~]

[~~White-throated Woodrat - (*Neotoma albigula*)~~]

[~~Eastern Woodrat - (*Neotoma floridana*)~~]

[~~Mexican Woodrat - (*Neotoma mexicana*)~~]

[~~Southern Plains Woodrat - (*Neotoma micropus*)~~]

[~~Mexican Vole - (*Microtus mexicanus*)~~]

[~~Prairie Vole - (*Microtus ochrogaster*)~~]

[~~Woodland Vole - (*Microtus pinetorum*)~~]

[~~Porcupine Family~~]

[~~Porcupine - (*Erethizon dorsatum*)~~]

[~~Order Carnivora - CARNIVORES~~]

[~~Dog Family~~]

[~~Coyote - (*Canis latrans*)~~]

[~~Cat Family~~]

[~~Mountain Lion - (*Felis concolor*)~~]

[~~Bobcat - (*Lynx rufus*)~~]

Figure: 34 TAC §9.107(e)(1)(A)

Category	Taxable Value Of Property
I	$10 billion or more
II	$1 billion or more but less than $10 billion
III	$500 million or more but less than $1 billion
IV	$100 million or more but less than $500 million
V	less than $100 million

Figure: 34 TAC §9.107(e)(1)(B)

Category	Taxable Value Of Industrial Property
I	$200 million or more
II	$90 million or more but less than $200 million
III	$1 million or more but less than $90 million
IV	$100,000 or more but less than $1 million
V	less than $100,000

Figure: 34 TAC §9.107(e)(2)

Category	Minimum Qualified Investment
I	$100 million
II	$80 million
III	$60 million
IV	$40 million
V	$20 million

Figure: 34 TAC §9.107(e)(3)

Category	Minimum Qualified Investment
I	$30 million
II	$20 million
III	$10 million
IV	$5 million
V	$1 million

Figure: 34 TAC §9.107(i)(4)(A)

Category	Minimum Amount of Limitation
I	$100 million
II	$80 million
III	$60 million
IV	$40 million
V	$20 million

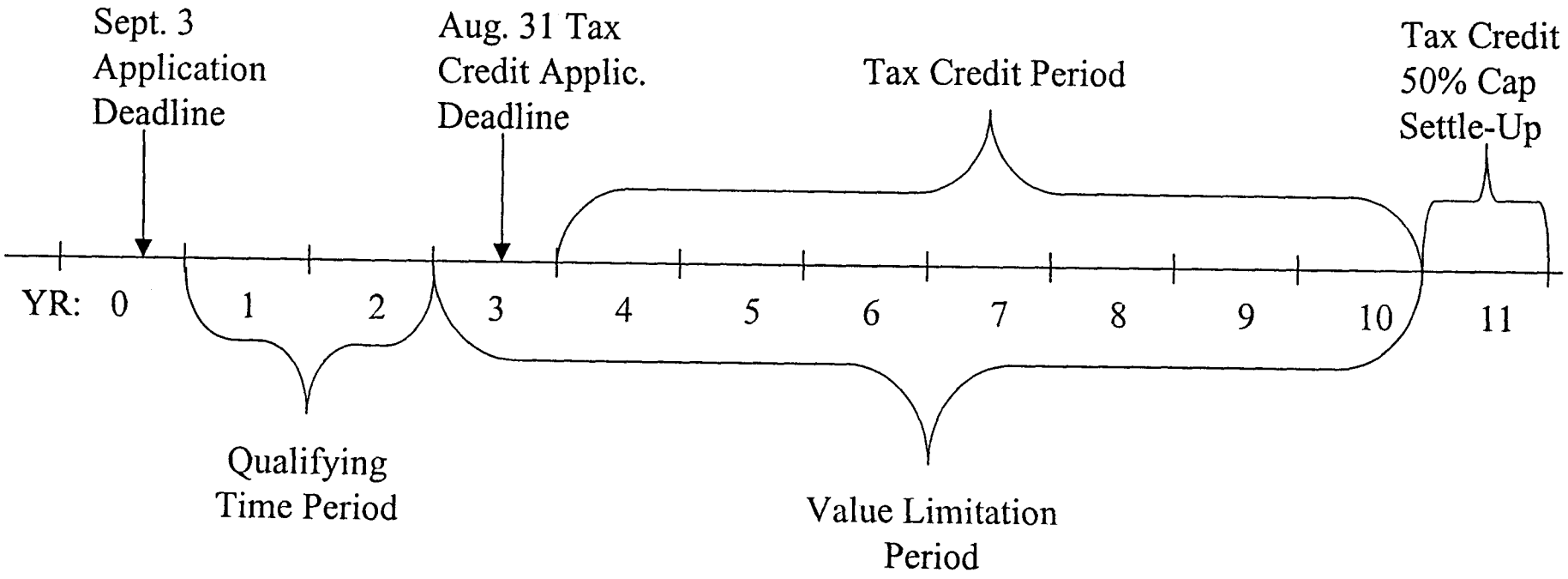
Figure: 34 TAC §9.107(i)(4)(B)

Category	Minimum Amount of Limitation
I	$30 million
II	$20 million
III	$10 million
IV	$5 million
V	$1 million

Figure: 34 TAC §9.107 (r)

TIME-LINE

Appraised Value Limitation And Tax Credit Under HB 1200



Notes: Each tick-mark on the time-line represents January 1, the beginning of a new tax year. The value limitation agreement begins on January 1 of year 1 on the time-line with a 2 year qualifying time-period followed by an 8 year value limitation period. The final 7 years of the agreement is also a tax credit period. The year after the agreement expires is a settle-up for any tax credit remaining from the application of the 50% cap (the credit cannot exceed 50% of the taxes paid in a given year).

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department on Aging

Notification of Available Funding: Request for Proposals

The Texas Department on Aging (TDoA) is awarding grants to higher education institutions to develop strategies or projects designed to help communities meet the ATW Benchmarks established by the Older American's Act. Higher education institutions have resources -- such as knowledge, expertise and facilities -- that communities can use in implementing capacity building strategies or projects. Examples of potential strategies or projects include developing training curricula, video, manuals, and public information campaigns.

TDoA is soliciting proposals for a one time only grant to higher education institutions in the amount of $10,000. The application deadline is June 14, 2002, and awards will be made on July 5, 2002. The duration of the project is 12 months with final deliverables due on July 5, 2003.

The full RFP and application materials can be found on the TDoA website at http://www.tdoa.state.tx.us under Announcements, News, and Opportunities/Funding.

Questions regarding this notice should be directed to: Beth Stalvey at (512) 424-6871 or beth.stalvey@tdoa.state.tx.us.

TRD-200202494
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Filed: April 23, 2002

♦ ♦ ♦

Office of the Attorney General

Texas Clean Air Act, Texas Health and Safety Code and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas, et al. v. CommTex Corp. and Reliant Energy Resources Corp., d/b/a Reliant Energy Entex, Cause No. 2001-28047, 269th District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant Reliant Energy Resources Corp., d/b/a Reliant Energy Entex (Reliant) is engaged in the production, distribution, and sale of natural gas. Defendant CommTex provides utility trenching and utility line installation service. Defendant CommTex struck a natural gas pipeline owned by Defendant Reliant in the process of digging a trench. Defendants caused the discharge of air contaminants from a natural gas pipeline in a concentration and duration such as to adversely affect vegetation and property.

Proposed Agreed Judgment: The agreed judgment provides for a partial settlement wherein Defendant Reliant has provided written notice to area contractors and made a monetary contribution of $1,500.00 to the Texas Underground Facilities Notification Corporation to support and improve the Texas One Call System. Defendant Reliant agreed to pay $1,000.00 in civil penalties, to be split equally between the State of Texas and Harris County; $1, 500.00 in attorney's fees, to be split equally between the State of Texas and Harris County; and court costs of $83.00.

For a complete description of the proposed settlement, the complete proposed Agreed Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at 512/463-2110.

TRD-200202496

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 23, 2002

♦ ♦ ♦

Texas Solid Waste Disposal Act and the Texas Water Code Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: Harris County, Texas, and the State of Texas, by and through the Texas Natural Resource Conservation Commission, a Necessary and Indispensable Party v. Perry Don Hardy; No. 2001-20919 in the 333rd Judicial District, Harris County, Texas.

Nature of Defendant's Operations: This suit concerns disposal of municipal solid wastes on a county right-of-way adjacent to property owned by Defendant Perry Don Hardy at 14634 Greenville, Harris County, Texas (the Property). The suit further concerns illegal outdoor burning on the Property.

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the claims in the suit. The Agreed Final Judgment requires Defendant to pay $1,000.00 in civil penalties.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at 512/463-2110.

TRD-200202511
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 23, 2002

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of April 12, 2002, through April 18, 2002. The public comment period for these projects will close at 5:00 p.m. on May 24, 2002.

FEDERAL AGENCY ACTIONS: Applicant: Neumin Production Company; Location: The project is located in San Antonio Bay, approximately 3 miles southeast of False Live Oak Point, Calhoun, County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Mesquite Bay, Texas. Approximate UTM Coordinates: Zone 14; Easting: 720467; Northing: 3121373. Project Description: The applicant requests an amendment to add State Tract (ST) 89 to the permit area and to extend the period of time for doing work under this permit. The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities in ST 89 as authorized under permit 14492(04). Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 02-0105-F1; Type of Application: U.S.A.C.E. permit application #14492(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Robbie Gregory; Location: The project is located on the shoreline of San Antonio Bay, south of the intersection of Bay Avenue and Pine Street and eastward to the Seadrift drainage ditch in Seadrift, Calhoun, County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Seadrift, Texas. Approximate UTM Coordinates: Zone 14; Easting: 724300; Northing: 3144250. Project Description: The applicant proposes to stabilize 487.5 feet of bluff shoreline by constructing a rock breakwater using 361 cubic yards of 6- to 12-inch rock riprap material. A total of 7,772 square feet of saltmarsh wetland area will be backfilled with approximately 63 cubic yards of clean fill in order to straighten the shoreline prior to stabilization. Dominant wetland vegetation at the site consists of smooth cordgrass, big cordgrass, sea ox-eye daisy, alkalai bulrush, marsh elder, and Carolina wolfberry. The purpose of the project is to reduce wave erosion and stabilize the bluff shoreline so the property can be further developed for residential housing. As mitigation for the project impacts, the applicant proposes to scrap approximately 10,000 square feet of uplands down to -0.5 feet mean seal level for planting of smooth cordgrass. Excavated material will be placed in an upland site owned by Calhoun County. CCC Project No.: 02-0106-F1; Type of Application: U.S.A.C.E. permit application #22563 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Sunbird Bay Development, LP; Location: The project is located on the west end of Galveston Island, approximately 16 miles west of 61st Street, east of Sea Isle and north of FM 3005, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting: 302340; Northing: 3226003. Project Description: The applicant proposes to construct a 250-slip marina, an access channel to West Galveston Bay, and a subdivision on this 210-acre site. The project plans call for 7.07 acres of wetlands to be filled, 1.27 acres of wetlands to be excavated, and 6 acres of wetlands to be preserved. The applicant proposes to hydraulically dredge 27,000 cubic yards of material from the access channel. The dredged material will be placed in a proposed disposal site adjacent to the proposed marina. The applicant plans to mechanically excavate 112,000 cubic yards of material

to create a marina, and use this material throughout the project area. The applicant proposes to mitigate for these impacts by creating 11.45 acres of wetland fringe around the existing ponds, creating 7.23 acres of open water ponds and wetland fringe, and creating 5.31 acres of wetland fringe adjacent to the existing wetland fringe. The total mitigation proposal is 23.99 acres. There is a 266-acre wetland fringe located north of this property, owned by Texas A&M University, that will not be impacted by the proposal other than through the construction of walkways over that wetland. CCC Project No.: 02-0107-F1; Type of Application: U.S.A.C.E. permit application #22607 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Natural Resource Conservation Commission as part of its certification under §401 of the Clean Water Act.

Applicant: United Oil & Minerals, LP; Location: The project is located in State Tract 163 in Aransas Bay, approximately 3.25 miles east of Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled St. Charles Bay, SW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 697900; Northing: 3100850. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities in order to drill Well No. 1 in ST 163. Approximately 4,500 cubic yards of shell, crushed rock, or washed gravel will be used as a base for the drilling rig and production facility. The base will cover approximately 27,000 square feet of deep (approximately -9.0 feet MLT), open bay bottom. No dredging will be required to access the site. In addition, the applicant will install a 4-inch flowline from the well to an existing production platform in ST 154. The proposed flowline will be 9,909 feet long and installed by jetting, disking, or plowing to a minimum depth of 3 feet below the bay bottom. Approximately 2,202 cubic yards of sand, silt, and clay will be displaced during the installation. No wetlands, seagrasses, or oysters are reported along the flowline route. CCC Project No.: 02-0108-F1; Type of Application: U.S.A.C.E. permit application #22637 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Lailah Suki; Location: The project is at 1309 Todville Road in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled League City, Texas. Approximate UTM Coordinates: Zone 15; Easting: 304791; Northing: 3271300. Project Description: The applicant proposes to fill approximately 0.5-acre of adjacent wetlands to construct single-family residences. Approximately 2,000 to 4,000 cubic yards of clean dirt and/or sand will be required as fill for the proposed work. The project site, approximately 0.8-acre, is bounded on all sides by existing roads. The existing on-site wetland is a 0.5-acre depression. It is primarily vegetated with sea ox-eye daisy (Borrichia frutescens), seashore saltgrass (Distichlis spicata), saltmeadow cordgrass (Spartina patens), and coastal water-hyssop (Bacopa monnieri). As compensation for the wetland impacts, the applicant proposes to provide an appropriate in-lieu-fee to The Nature Conservancy (TNC). The fee will be used to help fund a project designed to enhance existing wetlands, create new wetlands, and restore the natural hydrology on TNC's 65-acre Seawall Tract, located within the Texas City Prairie Preserve in Texas City, Galveston County, Texas. CCC Project No.: 02-0109-F1; Type of Application: U.S.A.C.E. permit application #22649 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Texas Department of Transportation; Location: The project is located along State Highway (SH) 87 from the Bolivar Ferry Landing to Loop 108 in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 328655; Northing: 3249452. Project Description: The applicant proposes to regrade a ditch and install a culvert with a check valve for the purpose of reestablishing drainage along SH 87 and the Bolivar Ferry Landing Staging Area. The applicant also proposes to construct a 1,900-foot rock revetment to prevent erosion of SH 87, and construct a 1,900-foot breakwater to facilitate the creation of a mitigation area. No additional right-of-way will be required. The proposed ditch regrading and culvert installation would permanently impact 0.575-acre of wetlands and 0.015-acre of open water. In addition to the proposed impacts resulting from the ditch regrading, the proposed rock revetment would permanently impact a total of 1.364 acres of jurisdictional area and 0.411-acre of adjacent wetlands. The applicant proposes to mitigate for the proposed impacts within Galveston Bay approximately 175 feet south of SH 87, between the Bolivar Ferry Landing and Loop 108. The mitigation would involve the construction of a breakwater that would facilitate the creation of a 5.82-acre mitigation area between the proposed rock revetment and breakwater. The breakwater would function to dissipate wave energy from wind and currents that could cause erosion of the proposed mitigation area and SH 87. The area between the proposed breakwater and proposed revetment would then be filled with dredge material hauled in by trucks or barges from Placement Area Number 42 located on John Wayne Road, at Loop 108, in Bolivar, Texas. The dredge material makeup is 20-30% sand, 60% silt, and 10-20% fine clay. The applicant proposes to fill the mitigation area with 28,802 cubic yards of dredge material to a target elevation of 2.11 feet and construct irregular channels within the mitigation area that connect with one of the four constructed openings in the breakwater. The applicant proposes to allow the mitigation area to revegetate naturally through natural seed banks in the area. CCC Project No.: 02-0110-F1; Type of Application: U.S.A.C.E. permit application #22536 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Natural Resource Conservation Commission as part of its certification under §401 of the Clean Water Act.

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. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200202531
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 24, 2002

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Comptroller of Public Accounts

Notice of Contract Award

The State Council on Competitive Government (Council) announces this notice of contract award in connection with the Request for Proposals for Presort/Bar Code Mailing Services to assist participating state

agencies with cost saving mail processing (RFP #138b). The Council announces that a contract is awarded as follows:

The notice of issuance of this RFP #138b was published in the Electronic State Business Daily on February 26, 2002.

National Presort Services, Inc., 5811 Berkman Dr., Suite A, Austin, TX 78723. The total contract amount is not to exceed $647,000.00.

The term of the contract is April 16, 2002 through April 30, 2005.

TRD-200202527
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 24, 2002

♦ ♦ ♦

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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/29/02 - 05/03/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 04/29/02 - 05/03/02 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-200202522
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 24, 2002

♦ ♦ ♦

Texas Department of Criminal Justice

Notice of Award

696-FD-2-B021 (Michael Unit Multiple Roof Replacement). Full Award.

Awarded Vendor: Roof Masters of America

357 Fontana Road, Monroe, La 71203

Awarded Amount: $1,480,000.00

Contract Number: 696-FD-2-3-C0188. Vendor is not a HUB Vendor.

TRD-200202520
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 24, 2002

♦ ♦ ♦

Texas Department of Health

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Stork Southwestern Laboratories, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Stork Southwestern Laboratories, Inc. (licensee-L05269) of Houston. A total penalty of $2,000 is proposed to be assessed to the licensee for alleged violations of 25 Texas Administrative Code, §§289.202 and 289.257.

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-200202519
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 24, 2002

♦ ♦ ♦

Texas Health and Human Services Commission

Public Hearing

The Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on the development of the *Health and Human Services Commission's Strategic Plan for Fiscal Years 2003-2007*. A draft of the strategic plan will be available on HHSC's WEB site (www.hhsc.state.tx.us) on or around May 10, 2002.

The public hearing is intended to provide the opportunity for public input and participation. Members of the public, clients of health and human service agencies, providers of services and other interested parties are encouraged to participate. Testimony and comments should focus on the mission and operation of the Health and Human Services Commission and on the draft of the strategic plan.

The hearing will be held on May 20, 2002 in Austin, TX, beginning at 9:30 a.m., Central Time, at the Brown Heatly Building, located at 4900 N. Lamar in public hearing rooms 1420 and 1430. Written comments may be submitted to the Health and Human Services Commission until May 23, 2002. Please address written comments to the attention of: Christy Fair, HHSC Planning, Evaluation & Research, 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, Fax: 512-424-6590, email: Christy.Fair@hhsc.state.tx.us.

AGENDA

9:30 a.m.

I. Welcoming remarks and opening comments - Pat Devin, Associate Commissioner, HHSC Planning, Evaluation & Research

II. HHSC Strategic Directions - Christy Fair, HHSC Planner

III. Public Testimony

IV. Closing Comments

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Christy Fair at 512-424-6638 or Christy.Fair@hhsc.state.tx.us seven days prior to the hearing so that appropriate arrangements can be made.

TRD-200202530
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: April 24, 2002

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Texas Bootstrap Loan Program-FY 2002 Deadline Extension

I. Deadline Extension

The Texas Department of Housing and Community Affairs (the Department) published a notice of funding availability on March 29, 2002 for the Texas Bootstrap Loan Program. The deadline for submission of applications has been extended to **5:00 p.m. Friday, May 31, 2002**.

IV. Application Request and Submission:

(a) Applications can be obtained by written request, or by contacting the Department's Office of Colonia Initiatives at the telephone number provided below. Applications are also available on the Department's website at www.tdhca.state.tx.us. Applications sent by facsimile will not be accepted. For additional information, please contact Maria I. Cazares mcazares@tdhca.state.tx.us or Phyllis BuenRostro pbuenros@tdhca.state.tx.us with the Office of Colonia Initiatives at 1-800-462-4251.

(b) Applications must be mailed or hand delivered to:

Texas Department of Housing & Community Affairs

OFFICE OF COLONIA INITIATIVES

P.O. Box 13941, Capitol Station

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite #400

Austin, Texas 78701

TRD-200202526
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 24, 2002

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERICAN SUMMIT INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Scottsdale, Arizona.

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-200202523
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 24, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by State Farm Mutual Automobile Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages of -17.4 to +124.6 by coverage, class, and territory. This overall rate change is +12.1%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by May 20, 2002.

TRD-200202470
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 22, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by State Farm Fire and Casualty Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages of -17.3 to +124.6 by coverage, class, and territory. This overall rate change is +20.2%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by May 20, 2002.

TRD-200202471
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 22, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages +2 to +82 by coverage and territory. The overall rate change is +9.6%

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with

the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by May 20, 2002.

TRD-200202472
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 22, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property and Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting, by territory, flex percentages +46 for Bodily Injury, +39 for Property Damage, +37 for Uninsured Motorist, +50 for Uninsured Motorist Property Damage, +56 for Medical Payments, +82 for Personal Injury Protection, +108 for Comprehensive and +65 for Collision. The overall rate change is +21.1%

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by May 20, 2002.

TRD-200202473
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 22, 2002

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Texas Lottery Commission

Instant Game 256 "Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 256 is "BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 256 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 256.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 256 - 1.2D

Figure 1: GAME NO. 256 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
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66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	

Table 2 of this section. Figure 2:16 TAC GAME NO. 256 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 256 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, or $25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (256), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 256-0000001-000.

L. Pack - A pack of "BINGO" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 124 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 124 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BINGO" Instant Game No. 256 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 130 (one hundred thirty) play symbols. The player must scratch off the "CALLER'S CARD" area to reveal (twenty-five) 25 Bingo Numbers and five (5) Bonus Numbers. The player must then mark all the Bingo Numbers on Cards 1 through 4 that match the Caller's Card. Each card has a corresponding prize box. If the player matches all bingo numbers in a complete horizontal, vertical, or diagonal line in a single card the player will win $2 in Card 1, $3 in Card 2, $5 in Card 3, or $10 in Card 4. If the player matches all bingo numbers in all four (4) corners in a single card the player will win $10 in Card 1, $20 in Card 2, $50 in Card 3, or $100 in Card 4. If the player matches all bingo numbers to make a complete "X" in a single card the player will win $100 in Card 1, $500 in Card 2, $1,000 in Card 3 or $25,000 in Card 4. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 130 (one hundred thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 130 (one hundred thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 130 (one hundred thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 130 (one hundred thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket can win up to four (4) times.

B. Adjacent tickets in a pack will not have identical patterns.

C. There will never be more than one (1) win on a single Bingo Card.

D. No duplicate numbers will appear on the Caller's Card.

E. No duplicate numbers will appear on each individual Player's Card.

F. Each Player's Card on the same ticket must be unique.

G. Each Caller's Card will have a minimum of four (4) and a maximum of eight (8) numbers from each range per letter including the bonus numbers.

H. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

I. The 25 Callers Card numbers and five Bonus numbers will match 39 to 59 numbers per ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BINGO" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with

an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,332,375 tickets in the Instant Game No. 256. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 256- 4.0

Figure 3: GAME NO. 256 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	2,155,133	9.43
$3	1,707,912	11.90
$5	609,958	33.33
$10	244,030	83.32
$15	122,020	166.63
$20	203,298	100.01
$30	43,271	469.88
$50	29,584	687.28
$100	18,616	1,092.20
$500	1,275	15,946.96
$1,000	54	376,525.46
$25,000	10	2,033,237.50

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 256 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 256, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202408

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 18, 2002

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Instant Game 290 "Straight 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 290 is "STRAIGHT 8's". The play style is a "tic-tac-toe w/2x, 3x bonus symbol".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 290 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 290.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $8.00, $16.00, $24.00, $100, $800, 2 TIMES, 3 TIMES, and NO BONUS.

Figure 1: GAME NO. 290 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$8.00	EIGHT$
$16.00	SIXTN
$24.00	TWY FOR
$100	ONE HUND
$800	EGT HUND
2 TIMES	AMOUNT
3 TIMES	AMOUNT
NO BONUS	AMOUNT

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 290 - 1.2D

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 290 - 1.2E

Figure 2: GAME NO. 290 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
SIX	$6.00
EGT	$8.00
SXN	$16.00
TFR	$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $6.00, $8.00, $16.00, $24.00.

H. Mid-Tier Prize - A prize of $48.00, or $100.

I. High-Tier Prize - A prize of $800.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (290), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 290-0000001-000.

L. Pack - A pack of "STRAIGHT 8's" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STRAIGHT 8's" Instant Game No. 290 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STRAIGHT 8's" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If a player gets three (3) 8's in any one row, column, or diagonal, the player wins the prize in the Prize Box. If a player gets a 2x or 3x under the Bonus Box, the player wins double or triple the prize won. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No ticket will contain three (3) or more of a kind other than the 8 (eight) symbol.

C. Every ticket will contain at least four (4) 8's. The overall usage for the remaining play symbols will be approximately even.

2.3 Procedure for Claiming Prizes.

A. To claim a "STRAIGHT 8's" Instant Game prize of $1.00, $2.00, $3.00, $6.00, $8.00, $16.00, $24.00, $48.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $48.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "STRAIGHT 8's" Instant Game prize of $800, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STRAIGHT 8's" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STRAIGHT 8's" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "STRAIGHT 8's" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on

the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 14,117,500 tickets in the Instant Game No. 290. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 290- 4.0

Figure 3: GAME NO. 290 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,411,751	10.00
$2.00	903,553	15.62
$3.00	395,091	35.73
$6.00	113,071	124.86
$8.00	28,169	501.17
$16.00	28,252	499.70
$24.00	56,470	250.00
$48.00	22,495	627.58
$100	1,785	7,908.96
$800	118	119,639.83

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 290 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 290, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202409
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 18, 2002

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Instant Game 305 "Cash Corral"

1.0 Name and Style of Game.

A. The name of Instant Game No. 305 is "CASH CORRAL". The play styles are "beat score, match 3, and quick $20".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 305 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 305.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, $30,000, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, and STAR SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 305 - 1.2D

Figure 1: GAME NO. 305 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
$20,000	30 THOU
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR

Table 2 of this section. Figure 2:16 TAC GAME NO. 305 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 305 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize - A prize of $30,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (305), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 305-0000001-000.

L. Pack - A pack of "CASH CORRAL" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000-001 will be on the top page. Tickets 002-003 will be on the next page and so forth and ticket 248-249 will be on the last page. Please note that the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH CORRAL" Instant Game No. 305 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH CORRAL" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player matches two (2) out of three (3) symbols, the player will win $20 instantly. In Game 2, if the player's YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize for that row. In Game 3, if the player matches three (3) like prize amounts, the player will win that prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 15 (fifteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No three (3) or more like non-winning prize symbol on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. In Game 1, there will never be three (3) like symbols.

E. In Game 2, there will be no ties between Your and Theirs in a row.

F. In Game 2, there will be no duplicate games on a ticket.

G. In Game 2, there will be no duplicate non-winning prize symbols on a ticket.

H. In Game 3, there will be no four (4) or more of a kind.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH CORRAL" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH CORRAL" Instant Game prize of $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH CORRAL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH CORRAL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH CORRAL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on

the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,983,000 tickets in the Instant Game No. 305. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 305- 4.0

Figure 3: GAME NO. 305 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	1,246,206	9.62
$4.00	982,619	12.19
$5.00	47,932	250.00
$10.00	167,788	71.42
$20.00	107,834	111.12
$40.00	71,879	166.71
$300	5,347	2,241.07
$30,000	20	599,150.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 305 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 305, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202410
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 18, 2002

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding Madanco Corporation dba Shopper's Mart #10 and dba Chevron's Food Mart, Docket No. 2000-1395-PST-E on April 15, 2002 assessing $12,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cougar Stop, Inc. dba Texas City Conoco, Docket No. 2000-1375-PST-E on April 15, 2002 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Lemanczyk, Staff Attorney at (512) 239-3400, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oscar Graham dba South Texas Wastewater Treatment, Docket No. 2001-0905-OSI-E on April 15, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stallion Springs, Inc., Docket No. 2001-0271-PWS-E on April 15, 2002 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Galvanizing, Inc., Docket No. 2001-0515- AIR-E on April 15, 2002 assessing $10,080 in administrative penalties with $2,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol Harkins, Enforcement Coordinator at (713) 767-3500, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Extrusions Corporation dba High Performance, Docket No. 2001-1227-AIR-E on April 15, 2002 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817) 588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harbor Grove Water Supply Corporation, Docket No. 2001-1068-PWS-E on April 15, 2002 assessing $2,251 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817) 588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aggregate Plant Products Co. dba Besser Appco, Docket No. 2001-0897-AIR-E on April 15, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, LLC dba Texas City Shell, Docket No. 2001-0593-PST-E on April 15, 2002 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nolan Oil Company, Incorporated, Docket No. 2001- 1039-PST-E on April 15, 2002 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Beaumont Partners, LP, Docket No. 2001- 0858-AIR-E on April 15, 2002 assessing $11,619 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2000-0874-MWD-E on April 15, 2002 assessing $9,510 in administrative penalties with $1,902 deferred.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sumrall Distributing Co., Inc., Docket No. 2001- 0943-PST-E on April 15, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke and Long Distributing Co. Inc. dba Everyday Stores #5209, Docket No. 2001-1135-PWS-E on April 15, 2002 assessing $2,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nico-Tyme Water Co-Op, Inc., Docket No. 2001- 0642-PWS-E on April 15, 2002 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terry Pearce, Docket No. 2001-0913-OSS-E on April 15, 2002 assessing $625 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RFK Enterprises, Inc. dba Food Spot #5, Docket No. 2001-0835-PST-E on April 15, 2002 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wal-Mart Stores, Incorporated, Docket No. 2001- 0577-EAQ-E on April 15, 2002 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bonham , Docket No. 2001-0841-MSW-E on April 15, 2002 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Columbia Industries, Inc., Docket No. 2001-1216- AIR-E on April 15, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DSC Drilling Specialties Company LLC, Docket No. 2001-0773-AIR-E on April 15, 2002 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AGP LC dba AGP Refineries LC, Docket No. 2001- 1225-AIR-E on April 15, 2002 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817) 588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cynthia Kovacevich dba Maryland Day Care & Preschool, Docket No. 2001-0923-PWS-E on April 15, 2002 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaukat R. Sunesara dba JR's Minute Maid, Docket No. 2001-0714-PST-E on April 15, 2002 assessing $9,900 in administrative penalties with $1,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frontier Fuel Co., Docket No. 2001-1424-PST-E on April 15, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Spring Properties, Ltd., Docket No. 2001- 1179-EAQ-E on April 15, 2002 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal States Crude Gathering Company, Docket No. 2001-1055-AIR-E on April 15, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Midcoast Gas Services, Inc., Docket No. 2001-0511- AIR-E on April 15, 2002 assessing $12,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KCS Medallion Resources, Inc., Docket No. 2001- 1106-AIR-E on April 15, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMCO, L.P., Docket No. 2001-0705-IHW-E on April 15, 2002 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold J. Smith III, Docket No. 2001-1108-OSI-E on April 15, 2002 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary Wrede and Basil Banister dba BBB Fertilizer Company, Docket No. 2001-0755-AIR-E on April 15, 2002 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skeeter Products, Inc., Docket No. 2001-0986-AIR-E on April 15, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Whatley dba Precision Commercial Plumbing, Inc., Docket No. 2001-0360-OSI-E on April 15, 2002 assessing $625 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding O'Rourke Dist. Co. Inc., Docket No. 2001-0630- MSW-E on April 15, 2002 assessing $225 in administrative penalties with $45 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Davis, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Waste Disposal Authority, Docket No. 2001-0482-IWD-E on April 15, 2002 assessing $34,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Groendyke Transport, Inc., Docket No. 2001-1380- PST-E on April 15, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915) 655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carrington Associates, Inc., Docket No. 2001-0566- PWS-E on April 17, 2002 assessing $7,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200202516

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 23, 2002

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Notice of Intent to Delete the Gulf Metals Industries Site from the State Superfund State Registry

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing a notice of intent to delete the Gulf Metals Industries state Superfund site (the site) from the state registry. The state registry is a list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the Voluntary Cleanup Program.

The site was originally proposed for listing on October 16, 1987 (12 TexReg 3858 - 3859). The site, including all land, structures, appurtenances, and other improvements, is approximately 16 acres located on Telean Street, northeast of the intersection of Mykawa Road and Almeda-Genoa Road, in Houston, Harris County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The site is a former sand and gravel pit that was used for disposal of hazardous materials, including oily sludges, from the 1950s through 1967. From 1965 through 1967, the site was operated as a commercial landfill for the disposal of metal slag and other foundry debris, including furnace sand and refractory brick. Use of the site as a disposal facility stopped in 1981.

The site respondents have satisfied the requirements of the administrative order for the remedial investigation/feasibility study. The site has been accepted into the TNRCC Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 Texas Administrative Code (TAC) §335.344(c).

In accordance with 30 TAC §335.344(b), the commission will hold a public meeting to receive comment on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held on June 4, 2002, at 7:00 p.m. at the Knights of Columbus Hall, 6320 Madden Lane (off Mykawa), Houston, Texas.

All persons desiring to make comments regarding the proposed deletion of the site may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., June 4, 2002, and should be sent in writing to Mr. Alonzo Arredondo, Project Manager, Remediation Division, Superfund Cleanup Section, MC-143, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on June 4, 2002.

A portion of the record for the site including documents pertinent to the executive director's proposed deletion is available for review during regular business hours at the Bracewell Branch Library, 10115 Kleckley Drive, Houston, Texas, telephone number (713) 948-9052. The complete public file may be obtained during regular business hours at TNRCC's Records Management Center, Building E, First Floor, located at 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about the public meeting, please call Joe Shields at (800) 633-9363.

TRD-200202502

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 23, 2002

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and 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 10, 2002**. 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 10, 2002**. 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: Arsh Enterprises Inc. dba Gastar II Store 077; DOCKET NUMBER: 2001- 1503-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0047950; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1), (3), and (5), and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resource Board Executive Order, maintain a record of maintenance conducted on any part of the Stage II equipment, and maintain a record of the results of the Stage II equipment; 30 TAC §115.244(1), (2), and (3), and THSC, §382.085(b), by failing to conduct the daily inspections for the Stage II vapor recovery system (VRS) and conduct monthly inspections of the components; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform annual pressure decay testing; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative complete a TNRCC approved Stage II training course in the maintenance and operation of the Stage II VRS; PENALTY: $6,400; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bahrami Enterprises, L.L.C.; DOCKET NUMBER: 2001-1392-PST-E; IDENTIFIER: PST Facility Identification Number 0028086; LOCATION: Midlothian, Ellis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the underground storage tank (UST) registration and self-certification form is fully and accurately completed and submitted; PENALTY: $800; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bexar Metropolitan Water District Public Facility; DOCKET NUMBER: 2001- 0711-PWS-E; IDENTIFIER: Public Water Supply (PWS) Numbers 0070020, 0150045, 0150052, 0150054, 0150084, 0150120, 0150125, 0150171, 0150205, 0150249, 0150265, 0150270, 0150532, 0150534, 0460013, 0460228, and 1630039; LOCATION: Poteet, San Antonio, near Boerne, Bulverde, and near San Antonio; Atascosa, Bexar, Comal, and Medina Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(A) and (F) and (3)(A) and (B), and THSC, §341.036, by failing to maintain a radius of 150 feet from the well location, secure a sanitary easement and extend the well casing 18 inches above the elevation of the finished door of the pump house, and submit well completion data; and 30 TAC §290.45(b)(1)(D)(i) - (v), and THSC, §341.0315, by failing to provide an adequate well capacity, provide adequate total storage capacity of 200 gallons per connection, provide an adequate service pump capacity of two gallons per minute (gpm) per connection, provide adequate elevated storage capacity, and provide emergency power at a minimum of 0.35 gpm per connection; PENALTY: $16,327; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(4) COMPANY: City of Blooming Grove; DOCKET NUMBER: 2001-1184-PWS-E; IDENTIFIER: PWS Number 1750001; LOCATION: Blooming Grove, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(B)(v) and (n)(2), by failing to maintain backflow prevention assemble test records and provide an up-to-date distribution map; 30 TAC §290.43(c)(3) and (4), by failing to provide a proper overflow and provide a proper water level indicator; and 30 TAC §290.51, by failing to pay an assessed late fee; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: The Boeing Company; DOCKET NUMBER: 2001-1013-IHW-E; IDENTIFIER: Solid Waste Registration (SWR) Number 85741; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: aircraft maintenance; RULE VIOLATED: 30 TAC §335.6(c), by failing to add four hazardous waste tanks, three class two solid waste management units, and the correct United States Environmental Protection Agency waste codes; 30 TAC §335.10(b), by failing to fully complete 13 hazardous waste manifests and continuation pages; 30 TAC §335.69(a)(1)(B) and (4), and (d)(1), §335.112(a)(1), (3), and (9), and 40 Code of Federal Regulations (CFR) §§265.16, 265.35, 265.37(a), 265.52, 265.53(b), 265.173(a), 265.192, 265.193, and 265.195, by failing to provide and document any emergency response training, maintain adequate aisle space in the container storage area, make any emergency arrangements with local authorities, provide a list of emergency coordinators in priority order, provide a copy of the facility contingency plan, keep four hazardous waste containers in a satellite accumulation area closed, perform and document hazardous waste tank system assessments, provide secondary containment on the frac tank and some of the ancillary equipment, and perform and document daily tank inspections; and 30 TAC §335.474(1), by failing to include information on environmental and human health risks; PENALTY: $65,520; ENFORCEMENT COORDINATOR: Susan Johnson, (512) 239-2555; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Brotherton Water Supply Corporation; DOCKET NUMBER: 2002-0019-PWS- E; IDENTIFIER: PWS Number 0740020 and Certificate of Convenience and Necessity Number 10154; LOCATION: Bonham, Fannin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iv), and THSC, §341.0315(c), by failing to provide a minimum ground storage capacity of 200 gallons per connection and provide a minimum pressure tank capacity of 20 gallons per connection; and 30 TAC §290.109(c)(2) and (g)(4), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice related to its failure to collect and submit samples for bacteriological analysis; PENALTY: $563; ENFORCEMENT COORDINATOR: Alayne Furguson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Chevron Phillips Chemical Company LP (formerly Phillips Petroleum Company); DOCKET NUMBER: 2000-0434-AIR-E; IDENTIFIER: Air Account Number HG-0566-H; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: polyethylene and polypropylene production; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 4437A/NO14, and THSC, §382.085(b), by failing to meet volatile organic compound emissions limitations and route a portion of polyethylene and polypropylene to the high activity catalyst heaters; and 30 TAC §101.303(f)(9)(B), §116.150(a)(3), and THSC, §382.085(b), by failing to submit a notice of intent to use form EC-3 and the emission credit certificate; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2001-1496-PST-E; IDENTIFIER: Enforcement Identification Number 17106; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: retail gasoline dispensing station; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that an owner or operator of a UST system has a valid, current delivery certificate; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Cibolo Creek Municipal Authority; DOCKET NUMBER: 2001-0896-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11269-001; LOCATION: Schertz, Bexar County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11269-001, and the Code, §26.121, by failing to comply with permitted limits for ammonia nitrogen; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Cypress Bible Church of Harris County; DOCKET NUMBER: 2001-1290- PWS-E; IDENTIFIER: PWS Number 1011408; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; PENALTY: $938; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Detar Hospital, LLC; DOCKET NUMBER: 2001-1376-PST-E; IDENTIFIER: PST Facility Identification Numbers 37538 and 63449; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to obtain a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Eddins-Walcher Co.; DOCKET NUMBER: 2002-0009-PST-E; IDENTIFIER: Enforcement Identification Number 17244; LOCATION: Sonora, Sutton County, Texas; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that an owner or operator of the UST system had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(13) COMPANY: Fort Worth Grain Company, Inc. dba Alliance Grain Cooperative, Inc.; DOCKET NUMBER: 2002-0086-IWD-E; IDENTIFIER: Enforcement Identification Number 17065; LOCATION: Aquilla, Hill County, Texas; TYPE OF FACILITY: corn silage pit; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial wastewater; PENALTY: $4,000; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Gracelake Management, LLC; DOCKET NUMBER: 2001-1271-AIR-E; IDENTIFIER: Air Account Number HF-0095-N; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the requirements for outdoor burning; PENALTY: $800; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: City of Hackberry; DOCKET NUMBER: 2001-0036-MWD-E; IDENTIFIER: Water Quality Permit Number 13434-001 and TPDES Permit Number 13434-001; LOCATION: near Hackberry, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 13434-001 and TPDES Permit Number 13434-001, by failing to comply with ordering provision number two of an agreed order (Docket Number 1998-1445-MWD-E) issued by the commission on August 31, 1999; and 30 TAC §305.125(1), Water Quality Permit Number 13434-001, TPDES Permit Number 13434-001, and the Code, §26.121, by failing to comply with permitted effluent limits; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Highland Village Car Care, Inc.; DOCKET NUMBER: 2001-0855-PST-E; IDENTIFIER: PST Facility Identification Number 0035472; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: automobile service station with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(i), and the Code, §26.3475(c)(1), by failing to perform release detection on a waste oil UST and conduct inventory control in conjunction with automatic tank gauging; 30 TAC §334.7(d)(3), by failing to amend registration; and 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(17) COMPANY: ICA GP, LLC dba Airline Mobile Home Park; DOCKET NUMBER: 2002- 0057-PWS-E; IDENTIFIER: PWS Number 1650003; LOCATION: near Odessa, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), (e)(2), and (f)(2), by failing to maintain a free chlorine residual minimum of 0.2 milligrams per liter (mg/l), provide disinfection, and provide the public water system's operating records for review; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to meet the minimum water system capacity requirements; and 30 TAC §290.41(c)(3)(B) and (K), and THSC, §341.036(c), by failing to extend the casing to a point 18 inches above the elevation of the finished floor of the pump house and seal the wellheads with gaskets or a pliable crack-resistant caulking compound; PENALTY: $1,880; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(18) COMPANY: Ideal Gas, Inc. and Ideal Gas, Inc. dba M & M Grocery; DOCKET NUMBER: 2001-0802-PST-E; IDENTIFIER: PST Facility Identification Numbers 58526 and 19912; LOCATION: Levelland and Whiteface; Hockley and Cochran Counties, Texas; TYPE OF FACILITY: bulk and retail sales of motor fuels/oil; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (B), and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.5(b)(1)(A), by failing to verify or observe a valid, current delivery certificate; PENALTY: $11,200; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(19) COMPANY: J. H. Jones Oil Company, Inc. of Silsbee, Texas; DOCKET NUMBER: 2002- 0160-PST-E; IDENTIFIER: Enforcement Identification Number 17409; LOCATION: Silsbee; Hardin County, Texas; TYPE OF FACILITY: petroleum products; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of a regulated UST had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Sajjad Pasha dba King Food Citgo; DOCKET NUMBER: 2001-1359-PST-E; IDENTIFIER: PST Facility Identification Number 0018106; LOCATION: Kingwood, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Larry O'Neill dba Lazy Acres Mobile Home Park; DOCKET NUMBER: 2001-1150-PWS-E; IDENTIFIER: PWS Number 0150186; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration at a minimum of 0.2 mg/l free chlorine; 30 TAC §290.46(f), (r), and (t), by failing to maintain the public water system's operating records, provide a minimum pressure of 35 pounds per square inch, and post a legible sign at each of its production, treatment, and storage facilities; and 30 TAC §290.41(c)(1)(F), by failing to make available sanitary control easements for the well; PENALTY: $280; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Marsh Distributing Company; DOCKET NUMBER: 2001-1352-PST-E; IDENTIFIER: Enforcement Identification Number 16974; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: retail gasoline dispensing; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that an owner or operator of a UST system has a valid, current delivery certificate; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Molded Fiber Glass Companies Texas LP; DOCKET NUMBER: 2001-1510- AIR-E; IDENTIFIER: Air Account Number CV-0123-V; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: fiber glass product manufacturing; RULE VIOLATED: 30 TAC §122.145(2), §122.146(1) and (2), TNRCC General Operating Permit Number 01792, and THSC, §382.085(b), by failing to submit two annual compliance certifications and failing to submit these documents to the executive director no later than 30 days after the end of each certification period; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: National Business Network dba Gessner Road Texaco; DOCKET NUMBER: 2001-1050-PST-E; IDENTIFIER: PST Facility Identification Number 0018651; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $600; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Philip Clemente dba Northeast Mobile Home Park; DOCKET NUMBER: 2001-1473-PWS-E; IDENTIFIER: PWS Number 0610090; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples and provide public notice of the sampling deficiencies; PENALTY: $2,188; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Alvin Oien, Jr.; DOCKET NUMBER: 2001-1342-MSW-E; IDENTIFIER: Enforcement Identification Number 16986; LOCATION: Southlake, Denton County, Texas; TYPE OF FACILITY: unauthorized disposal; RULE VIOLATED: 30 TAC §330.5 and the Code, §26.121, by failing to prevent the disposal of unauthorized municipal solid waste (MSW); PENALTY: $1,600; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Olmos Construction, Inc.; DOCKET NUMBER: 2001-1404-PST-E; IDENTIFIER: PST Facility Identification Number 0018581 and Leaking PST Number 115235; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(ii), and the Code, §26.3475, by failing to perform monthly release detection monitoring and provide release detection; 30 TAC §334.49(a) and the Code, §26.3475, by failing to provide continuous corrosion protection; 30 TAC §334.10(b), by failing to maintain the UST system records and have them available for inspection; 30 TAC §334.72, by failing to report a suspected release; 30 TAC §334.74, by failing to investigate and confirm a suspected release; and 30 TAC §334.7(d)(3), by failing to provide written notice of any amendments, updates, or changes to the registration information; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Port Mansfield Public Utility District; DOCKET NUMBER: 2001-1102- MSW-E; IDENTIFIER: MSW Unauthorized Site Number 455150023; LOCATION: Port Mansfield, Willacy County, Texas; TYPE OF FACILITY: MSW transfer station; RULE VIOLATED: 30 TAC §330.65(b)(1), by failing to obtain a registration for the transfer station site prior to construction and operation; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425- 6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(29) COMPANY: Gene Harris Petroleum, Inc. dba Quickway #13; DOCKET NUMBER: 2001- 0377-PST-E; IDENTIFIER: PST Facility Identification Number 0036220; LOCATION: Everman, Tarrant County, Texas; TYPE OF FACILITY: gasoline retail; RULE VIOLATED: 30 TAC §115.245(2) and (3)(A), and THSC, §382.085(b), by failing to conduct a pressure decay test and install a healy vacuum monitor; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Gerald B. Dipple, Jr. dba Remington Tanner Dairy; DOCKET NUMBER: 2001-1303-AGR-E; IDENTIFIER: TPDES Permit Number 03112; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC

§§305.125(1), 321.31(a), and 321.42, TPDES Permit Number 03112, and the Code, §26.121, by failing to prevent unauthorized discharges of wastewater and report the unauthorized discharge; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: City of Robert Lee; DOCKET NUMBER: 2001-1136-MWD-E; IDENTIFIER: TPDES Permit Number 13901-001; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), and §305.126, and TPDES Permit Number 13901-001, by failing to initiate engineering and financial planning for expansion and/or upgrading, maintain and operate the treatment facility in order to achieve optimum efficiency and treatment capability, submit notification of noncompliances that deviated from the permitted effluent limitation, comply with permit limits for ammonia nitrogen and total suspended solids, and properly maintain automatic flow measuring device to ensure accuracy of results; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(32) COMPANY: City of Santa Rosa; DOCKET NUMBER: 2001-1316-PWS-E; IDENTIFIER: PWS Number 0310009; LOCATION: Santa Rosa, Cameron County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(B) and (c)(2)(C), and THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gpm per connection and provide a transfer pump capacity of 0.6 gpm per connection; and 30 TAC §290.46(f)(3)(B)(iv) and (s), by failing to maintain calibration records for laboratory equipment and provide accurate testing equipment; PENALTY: $2,188; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(33) COMPANY: Stampede Fuels, Inc.; DOCKET NUMBER: 2002-0015-PST-E; IDENTIFIER: Enforcement Identification Number 17155; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate prior to depositing any regulated substance into a UST system; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239- 6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Texaco, Inc.; DOCKET NUMBER: 2001-1350-PST-E; IDENTIFIER: PST Facility Identification Number 0048009; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil and gas exploration; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to submit a UST registration and self-certification form; 30 TAC §335.323, by failing to pay outstanding hazardous waste generation and non-hazardous waste generation fees; 30 TAC §334.128(a), by failing to pay aboveground storage tank fees; and THSC, §361.603(b)(2), by failing to pay voluntary cleanup program fees; PENALTY: $800; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Total Roll-Offs, L.L.C.; DOCKET NUMBER: 2001-1071-MSW-E; IDENTIFIER: MSW Registration Number 40173; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: transfer station; RULE VIOLATED: 30 TAC §330.5(a), by failing to obtain a registration or other authorization prior to collecting, storing, or processing municipal solid waste; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(36) COMPANY: Doris Higgins dba Two Pines Mobile Home Park; DOCKET NUMBER: 2001-0940-PWS-E; IDENTIFIER: PWS Number 1020085; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: mobile home park; RULE VIOLATED: 30 TAC §290.45(b)(1)(E)(ii) and THSC, §341.0315, by failing to meet the minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.41(c)(3)(A) and (N), and §290.46(f)(3)(A)(ii), by failing to submit well completion data and install a flow meter on the well pump discharge line; 30 TAC §290.43(e), by failing to enclose the system's pressure tank in an intruder-resistant fence; and 30 TAC §290.51(a)(3), by failing to submit payment for the public health service fees; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(37) COMPANY: Steve Vandermeer dba Vandermeer Dairy; DOCKET NUMBER: 2001-1145- AGR-E; IDENTIFIER: Water Quality Permit Number 03190; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §305.125(1) and (5), and §321.31(a), Water Quality Permit Number 03190, and the Code, §26.121, by failing to prevent an unauthorized discharge of wastewater; and 30 TAC §321.42 and Water Quality Permit Number 03190, by failing to notify the executive director in writing of an unauthorized discharge; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Varco, L.P. dba Tuboscope Vetco International, Inc.; DOCKET NUMBER: 2001-0916-IHW-E; IDENTIFIER: SWR Number 36115; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil and gas field service; RULE VIOLATED: 30 TAC §335.69(a)(1)(B) and §335.112(a)(9) and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(3), by failing to provide secondary containment for four sumps; 30 TAC §335.62, by failing to conduct hazardous waste determinations; and THSC, §370.008, by failing to pay outstanding toxic chemical release report fees; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: W&W Fiberglass Tank Company; DOCKET NUMBER: 2001-1524-AIR-E; IDENTIFIER: Air Account Number GH-0099-A; LOCATION: Pampa, Gray County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b) (now 30 TAC §122.130(a)), and THSC, §382.054 and §382.085(b), by failing to submit a Title V initial application for a federal operating permit; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(40) COMPANY: Westfield Sandblasting, Inc.; DOCKET NUMBER: 2001-1362-IHW-E; IDENTIFIER: SWR Number 83338; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: equipment sandblasting and painting; RULE VIOLATED: 30 TAC §335.6(c), by failing to update the notice of registration; 30 TAC §335.62, by failing to conduct an adequate waste determination; 30 TAC §335.503, by failing to conduct a non-hazardous waste determination; and 30 TAC §335.475(4) and THSC, §361.505, by failing to prepare and implement an adequate source reduction/waste minimization plan; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200202501
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 23, 2002

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Public Notice of Intent to Delete

Notice of Deletion of Sampson Horrice Site from the State Superfund Registry

The executive director (ED) of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing this notice of deletion of the Sampson Horrice site (the site) from the state registry, the list of state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state registry in the November 15, 1996 issue of the *Texas Register* (21 TexReg 11207). The site, including all land, structures, appurtenances, and other improvements is a former gravel pit, encompassing approximately 20 acres, located in a residential and industrial area at 2000 and 2006 Plainfield Drive in Dallas, Dallas County, Texas. In addition, the site included any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Drums of solid and hazardous wastes were accepted at the site in late 1983 or early 1984. Investigation of the site revealed that the constituents of concern (COCs) included benzene, toluene, ethyl benzene, xylene, total petroleum hydrocarbons, lead, mercury, chromium, dieldrin, aldrin, and DDT. Concurrent with the remedial investigation, a removal action was performed at the site.

A removal action began in August 1999 that included excavation, sampling, and removal of 349 drums and 200 yards of impacted soil. Verification samples were collected at the completion of the removal activities and confirmed that the remaining soils were below the TNRCC Risk Reduction Standard 2 residential standards for the COCs at the site. The excavation was then filled with surrounding clean soils, completing the removal action in January 2000.

A Certificate of Remediation, a record of TNRCC remedial activities on this property, has been filed in the real property records of Dallas County, Texas. Notice was given in the Certificate of Remediation that arsenic, chromium, lead, and mercury were detected, but at levels below the TNRCC's Standard 2 residential medium specific concentrations for soil. Future land use is considered suitable for residential purposes in accordance with risk reduction standards applicable at the time of the filing.

In accordance with 30 Texas Administrative Code (TAC) §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the site. The meeting was held on Tuesday, December 4, 2001, at 7:00 p.m. at the Nancy Moseley Elementary School Auditorium, 10400 Rylie Road, Dallas, Texas.

The commission has prepared a Responsiveness Summary that responds to the comments received at the public meeting. The complete public file, including the transcript of the meeting and the Responsiveness Summary, may be viewed during regular business hours at the TNRCC Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

In accordance with 30 TAC §335.344(c), the ED determined that the site no longer presents an imminent and substantial endangerment to public health and safety or the environment due to the removal actions that have been performed at the site.

Additionally under Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Dallas County stating that the facility has been deleted from the state registry.

All inquiries regarding the deletion of the site should be directed to Ms. Barbara Daywood, TNRCC Community Relations, telephone numbers (800) 633-9363 or (512) 239-2463.

TRD-200202503
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 23, 2002

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Texas Department of Public Safety

Consultant Contract Award

(1) The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Government Code, Chapter 2254, announces the awarding of a consultant contract for the Crash Records Information System (CRIS) Project.

(2) The Request for Offer (RFO) was published in the March 8, 2002, issue of the *Texas Register*, (27 TexReg 1929).

(3) The selected consultant will perform the following services:

(A) Review and refine the "As-Is" model as it relates to Texas Department of Transportation (TxDot) processes and interfaces that impact the project.

(B) Review the recommendations for new development that were made after the original CRIS Study.

(C) Review existing initiatives or outsourcing opportunities that have become available in the intervening years since the original CRIS Study was conducted.

(D) Review emerging initiatives that are being proposed currently.

(E) Analyze and recommend scenario's, solutions or combinations that would provide the best value to the State justified by a cost/benefit analysis.

(4) 405-C2-8031 was awarded to the following vendor:

RFD & Associates, Incorporated 401 Camp Craft Road Austin, Texas 78746

(5) This contract has a total value of $ 366,020.00 beginning April 22, 2002 and ending August 6, 2002.

(6) The deliverables and due dates are as follows:

(A) "As-Is" Model 06/25/02

(B) Findings and Recommendations 07/11/02

(C) Cost/Benefit Analysis for Each Strategy 07/16/02

(D) Analysis of Prioritized Strategies within Vision 07/23/02

(E) Analysis of Three Top Strategies 07/24/02

(F) Executive Summary 07/31/02

(G) Final Report 08/06/02

TRD-200202525

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: April 24, 2002

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Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 18, 2002, for a certificate of convenience and necessity for a proposed transmission line in Harrison County, Texas.

Docket Style and Number: Application of Southwestern Electric Power Company for a Certificate of Convenience and Necessity for a Proposed 345 kV Transmission Line in Harrison County, Texas. Docket Number 25776.

The Application: Southwestern Electric Power Company (SWEPCO) stated it proposes to construct a 0.5 mile 345 kV loop of the existing Tenaska-Pirkey 345 kV line located approximately 10 miles southwest of Marshall, Texas on the east side of State Highway 43 and approximately 0.75 miles southeast of the FM 3326 intersection with State Highway 43. The community of Darco is located approximately 2.3 miles to the north of the proposed line. The proposed line loops SWEPCO's existing Tenaska-Pirkey 345 kV line, but to the east of State Highway 43. This loop extends three spans in a westerly direction from the Tenaska-Pirkey 345 kV line and terminates into the new switching station being built at the site of a new Independent Power Plant designated as the Harrison County Power Project, a joint project of Entergy Power Ventures, LLP and Northeast Texas Electric Cooperative.

Pursuant to P.U.C. Substantive Rule §25.101(c)(4), the commission must render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200202499
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2002

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Notice of Application for a Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 17, 2002, for a service area exception to serve two new meters at a new Ammoco compressor station located north of Mertzon in Irion County, Texas.

Docket Style and Number: Application of West Texas Utilities Company for a Service Area Exception. Docket Number 25772.

The Application: West Texas Utilities Company (WTU) filed an application for a service area exception to serve two new meters at a new Ammoco compressor station located north of Mertzon in Irion County. In the application, WTU stated the new load is located just across the certification line in an area that is singly certified to Concho Valley Electric Cooperative (CVEC). Without considerable construction resulting in a costly line extension, WTU asserted CVEC cannot serve this load. Given the consent of all parties involved, WTU requested that the commission process this application administratively and in accordance with P.U.C. Substantive Rule §25.101(c)(5)(B).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200202498
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 16, 2002, Henry Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60516. Applicant intends to remove the resale-only restriction.

The Application: Application of Henry Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 25756.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than May 8, 2002. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25756.

TRD-200202458
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2002

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Notice of Application for Relinquishment of Service Provider Certificate of Operating Authority

On April 18, 2002, SouthWest TeleConnect filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60058. Applicant intends to discontinue service and relinquish its certificate.

The Application: Application of SouthWest TeleConnect to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 25775.

Persons with questions about this docket or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than May 8, 2002. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25775.

TRD-200202461
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2002

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a joint application for sale, transfer, or merger on April 17, 2002, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 (Vernon 1998 & Supplement 2002).

Docket Style and Number: Joint Application of Central Power and Light Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 25774.

The Application: The joint application involves the transfer of the following commission- approved Central Power and Light Company transmission lines to LCRA Transmission Services Corporation: (1) the 138 kV transmission line that interconnects the CITGO/North Oak Park Substation to the Highway 9 Substation (Highway 9 Project) approved in Docket Number 21838; and (2) the 138 kV transmission line from CITGO/North Oak Park Substation to Nueces Bay Substation (Nueces Bay Project) approved in Docket Number 22340.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division 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 (toll-free) 1-800-735-2989.

TRD-200202460
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2002

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.315

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 19, 2002, for waiver of the requirements in P.U.C. Substantive Rule §26.315, regarding regulated billing processes established for all dominant certificated telecommunications utilities (DCTU).

Docket Title and Number: Application of Southwestern Bell Telephone Company (SWBT) for Waiver of Requirements in P.U.C. Substantive Rule §26. 315. Docket Number 25781.

The Application: In accordance with P.U.C. Substantive Rule §26.315(c), to ensure that only validated collect calls are billed, the DCTU has the option of choosing one of two methods presented in subsection (c)(1) or (c)(2). According to SWBT, compliance with subsection (c)(2) is technically impossible. Thus, SWBT asserted its only method of compliance with the rule is with the option available under P.U.C. Substantive Rule §26.315(c)(1). However, SWBT further asserted that it would be unable to complete the technical system changes necessary to implement P.U.C. Substantive Rule §26.315(c)(1) until the fourth quarter of this year. SWBT requested that the commission allow SWBT to report back to the commission three months after the date of its application with respect to any changes in the estimated implementation schedule.

On or before May 15, 2002, persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 25781.

TRD-200202521
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2002

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Public Notice of Amendment to Interconnection Agreement

On April 23, 2002, Southwestern Bell Telephone Company and Westex Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25803. 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 25803. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 24, 2002, 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 Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25803.

TRD-200202524
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2002

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

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 §26.214

Docket Title and Number. United Telephone Company of Texas, Inc. doing business as Sprint Notice of Intent to File LRIC Study for Sprint Privacy ID and Sprint Talking Call Waiting Services Pursuant to P.U.C. Substantive Rule §26.214 on or after April 24, 2002, Docket Number 25753.

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 25753. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study 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 Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202456
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2002

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

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 §26.214

Docket Title and Number. Central Telephone Company of Texas doing business as Sprint Notice of Intent to File LRIC Study for Sprint Privacy ID and Sprint Talking Call Waiting Services Pursuant to P.U.C. Substantive Rule §26.214 on or after April 24, 2002, Docket Number 25754.

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 25754. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study 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 Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202457
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2002

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Public Notice of Workshop on Rulemaking to Amend Substantive Rule §26.226 to Address Winback/Retention Offers by Chapter 58 Electing Companies

The Public Utility Commission of Texas (commission) will hold a workshop regarding Winback/Retention Offers by Chapter 58 Electing Companies on Monday, May 20, 2002, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 25784, *Rulemaking to Amend Substantive Rule §26.226 to Address Winback/Retention Offers by Chapter 58 Electing Companies*, has been established for this proceeding. No later than noon on Monday, May 6, 2002, commission staff will make available in Central Records under Project Number 25784 and on the project web page a straw man rule and a list of questions to be discussed at the workshop.

Questions concerning the workshop or this notice should be referred to Bih-Jau (B.J.) Sheu, Senior Economist, Telecommunications Division, 936-7395 or Roger Stewart, Attorney, Legal Division, 936-7296. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202497
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2002

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Public Notice of Workshop Regarding Implementation of 211 Services

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding implementation of statewide 211 services. The commission asks that parties be prepared to discuss technical matters and cost and pricing issues involved in the routing of 211 calls to a TEXAN network being implemented for this purpose pursuant to the 77th Legislature HCR 109. The Texas Health and Human Services Commission Information and Referral Network (HHSC) is developing this network pursuant to authority under Texas Government Code §531.0312. United Ways of Texas (UW Texas) will partner with HHSC in this endeavor. Implementation and on-going maintenance of the 211

network will be the responsibility of the Texas Information and Referral Network (TIRN). The commission's workshop will be held on Tuesday, May 14, 2002, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 25681, *PUC Proceeding to Implement 211 Services*, has been established for this proceeding.

Interested parties are requested to come prepared to comment upon and address the questions below. The workshop agenda will not be confined solely to these proposed questions. A portion of the workshop will be reserved for open discussion of general or specific issues pertaining to implementation of the statewide 211 network presented by the attendees.

For the Texas Information and Referral Network (TIRN) -

1. What are the specific NPAs and NXX's involved in the initial implementation?

2. What is the anticipated timeline for implementation of the initial Area Information Centers (AICs)?

3. How does TIRN intend to place and follow-up the orders for implementation and handling of non-recurring charges involved? Is there a single point of contact for the local exchange companies (LECs)?

4. What are TIRN's plans regarding customer education?

5. In areas where caller ID is unavailable, does TIRN have a technical alternative to handle routing of calls?

a. How does TIRN anticipate handling a call where caller ID per line or per call blocking has been activated?

b. If the 211 call is routed via an 800 number (8YY), how will TIRN handle caller identification, assuming the caller's ANI is not sent?

6. What procedures will be used to determine and establish the interexchange carrier(s) responsible for 8YY routing?

For the Local Exchange Companies (LECs) -

1. What timeline will be required to provide software upgrades (if any) and programming for the implementation of TIRN's initial AICs?

2. Is each LEC capable of identifying those central offices that will require translation to an 8YY for routing purposes? If yes, what information will be required to make this determination? If no, how quickly will the LECs be able to advise TIRN of the extent to which 8YY must be employed throughout Texas?

3. Are the LECs able to identify those areas where caller ID will not be available to assist TIRN's routing? What will the LECs require from TIRN to make these identifications? How quickly can they be made?

4. Is a methodology in place for the provision of reciprocal compensation between and among LECs originating and terminating 211 calls?

5. What non-recurring costs/charges will be incurred to establish the routing of 211 calls to a local number for routing by TIRN?

6. What recurring costs/charges will be incurred to establish the routing of 211 calls to a local number for routing by TIRN? Please be prepared to provide specific information regarding the activities and system costs that are the basis of these costs/charges.

7. What non-recurring costs/charges will be incurred to establish the 8YY routing?

8. What recurring costs/charges will be incurred to establish the 8YY routing? Please be prepared to provide specific information regarding the activities and system costs that are the basis of these costs/charges.

9. What is the average amount of time involved in a typical switch translation for a single telephone number?

10. Can a central office switch determine routing for a call based upon an "either or" equation? For example; if local then route to this local number (10 or 7 digit), or, if not local then route to this 8YY number? If the answer is yes, what is required to accomplish this and what are the costs/charges entailed?

11. What is entailed in billing 211 calls on a per call basis vs. per minute of use (MOU) basis?

For Payphone Providers -

1. What timeline will be required to re-program payphones so that 211 sends users to the TIRN network instead of payphone maintenance?

2. What information will payphone providers require of either LECs or TIRN to accomplish re-programming for 211?

Questions concerning the workshop or this notice should be referred to Janis Ervin, Telecommunications Division, (512) 936-7372. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202512
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2002

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The University of Texas System

Request for Information (Intellectual Property)

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 2002 to August 31, 2003) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description. The U. T. System comprises six health institutions and nine academic institutions located in eleven cities in Texas. Research activities and other educational pursuits at each institution produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Texas Attorney General, U. T. System will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; and to prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries. U. T. System also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in intellectual property-related matters, the names, experience, and scientific or technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the submission

of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (4) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Responses should be sent by mail, facsimile, electronic mail (preferred) or delivered in person, marked "Response to Request for Information." If sent by mail, two copies of the response are requested. Address all responses to Georgia K. Harper, Section Manager for Intellectual Property, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (gharper@utsystem.edu; fax: 512/499-4523; telephone 512/499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above no later than 5:00 p.m., Friday, May 31, 2002.

TRD-200202419
Francie A. Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: April 19, 2002

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Texas Water Development Board

Requests for Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for Groundwater Availability Models for the (northern) Trinity, Woodbine, Seymour, Queen City, Sparta, Igneous, and West Texas Bolsons (Wildhorse Flat, Michigan Flat, Ryan Flat and Lobo Flat) aquifers in Texas. Guidelines for Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives: During the 76th and 77th legislative sessions, the Texas Legislature approved funding for the Groundwater Availability Modeling (GAM) program. The purpose of GAM is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. The GAM program will include (1) substantial stakeholder involvement, (2) result in standardized, thoroughly documented, and publicly available numerical groundwater flow models and support data, and (3) provide predictions of groundwater availability through 2050 based on current projections of groundwater demands during drought-of-record conditions.

In support of GAM, the TWDB is requesting Statements of Qualifications for the development of numerical groundwater flow models of the (northern) Trinity, Woodbine, Seymour, Queen City, Sparta, Igneous, and West Texas Bolsons (Wildhorse Flat, Michigan Flat, Ryan Flat and Lobo Flat) aquifers. There will be five modeling projects: (1) a model of the (northern) Trinity and Woodbine aquifers, (2) a model of the Seymour aquifer, (3) a model of the Lipan aquifer, (4) a model of the Igneous and West Texas Bolsons (Wildhorse Flat, Michigan Flat, Ryan Flat and Lobo Flat) aquifers, and (5) work to include the Queen City and Sparta aquifers into the existing models of the Carrizo-Wilcox aquifer. A separate Statement of Qualifications for each of the five modeling projects is expected.

Details on the modeling projects and project requirements are available from the TWDB. The TWDB Web site includes (1) copies of the attachments, (2) a list of review criteria, and (3) supporting material (www.twdb.state.tx.us under the heading, "What's New").

The following issues need to be addressed in the Statement of Qualifications:

* Communication between the contractor and the stakeholder advisory forum for the model, regional water planning groups, and groundwater conservation districts;

* Conceptual model of recharge and how recharge will be modeled;

* How surface-water/groundwater interaction will be modeled;

* How hydraulic properties will be distributed;

* Hydrostratigraphy for the model;

* Approach for modeling the down-dip boundary of the model (if appropriate);

* Approach for calibrating the model;

* How environmental impacts will be gaged; and

* How the project will benefit statewide water planning and groundwater districts.

In addition, we expect potential contractors to indicate their abilities in:

* General hydrogeology,

* Hydrogeology of the modeled aquifer,

* Numerical groundwater flow modeling,

* Geographical information systems,

* Communicating with the public,

* Technology transfer,

* Producing high-quality reports, and

* Meeting deadlines.

The research proposal description shall not be more than 10 pages in length. On May 13th, 2002, 1:30 PM in Room 111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, TWDB staff will hold an information session to address questions about the Requests for Qualifications.

Description of Funding Consideration. Up to $1,660,000 has been initially authorized for water research assistance from the TWDB's Research and Planning Fund for this research for FY 2003. A total of $1,660,000 in funds is anticipated to be appropriated by the 78th Legislature for FY 2004. Thus the total anticipated cost of this program is $3,320,000. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may

be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information.

Ten double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 5:00 PM, June 7th, 2002. Statements of Qualifications must be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statement of Qualifications rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines. Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Ms. Phyllis Thomas at the preceding address or by calling (512) 463-7926. Technical questions should be directed to Dr. Robert Mace, (512) 936-0861.

TRD-200202420
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: April 19, 2002

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Request for Statement of Qualifications from Consultants - Water Research Study Priority Topic

The Texas Water Development Board (board) requests the submission of statements of qualifications (RFQs) from interested consultants leading to the possible award of contracts for state Fiscal Year 2002 to conduct water research on one priority topic. The amount of the grant awarded by the board shall not exceed $300,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) are available upon request from the board, or may be found at the Secretary of State's Internet address: {http://www.sos.state.tx.us/tac/}; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the RFQ, which include an application form and detailed information on the research topic, will be available at the board's website at: {http://www.twdb.state.tx.us/publications/requestforproposals/requestsforproposals_index.htm}, or will be provided upon request.

Description of the Research Objectives and Purpose. The board's grant contribution is estimated not to exceed the posted dollar value adjacent the priority research topic. RFQs are requested for the following priority research:

Evaluation of Water and Wastewater Facility Needs: For communities located both along the Texas/Mexico border and in other EDAP-eligible non-border counties ($300,000).

The needs of border and non-border communities that do not have adequate water and wastewater services must be updated in order to accurately quantify the estimated construction-related costs of providing these services in the affected areas. Research is needed to update the estimates of the border and non-border Economically Distressed Areas Program (EDAP) county water and wastewater needs that were last obtained in 1996. This research, together with the non-EDAP statewide assessment performed in 2001, should improve the efficacy of TWDB's funding programs by providing an updated picture of the water infrastructure needs of areas with inadequate sanitary services and possibly, associated public health threats.

Description of Consultant Criteria. The consultant should demonstrate prior experience in the priority research topic, and be able to review, research, analyze, evaluate and interpret data and research findings; and have excellent oral presentation and writing abilities. If the consultant is short-listed, the consultant should be prepared to make an oral presentation to staff members of the board. The scope of work, schedule, and contract amount will be negotiated after the board selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next-most qualified applicant; however, a negotiation will not occur with applicants who are determined by the board to be unqualified, or otherwise unsuited to perform the requested research. Consultants that are selected to conduct the research may be required to present the results of their research at one or more of the board's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information. Ten double-sided copies of a completed Statement of Qualifications must be filed with the board prior to 5:00 PM, June 3, 2002. Respondents to this request shall limit their Statement of Qualifications to 10 double-spaced pages, excluding the resumes of the project team members. Statements of Qualifications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 448, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231. All applicants must contact the board to obtain the board's guidelines for responding to the RFQ. Requests for information, the board's guidelines for responding to the RFQ, and detailed information on each research topic should be directed to Ms. Phyllis Thomas at the preceding address, by calling (512) 463-7926, or by e-mail to: {phyllis@twdb.state.tx.us}.

TRD-200202411
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: April 18, 2002

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Texas Workforce Commission

Notice of Available Funds for FY 2003 for Apprenticeship Training Programs

Notice of Available Funds for Fiscal Year 2003 for Apprenticeship Training Programs and Occupations Within Programs Not Currently Receiving Funding from the Texas Workforce Commission under the Texas Education Code, Chapter 133.

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the Texas Education Code, Chapter 133.

Eligible Applicants. The Texas Workforce Commission is requesting preliminary contact-hour estimates from public school districts and state post-secondary institutions for related instruction (apprentice) classes for apprenticeship training programs or occupations within

programs not currently receiving funding from the Texas Workforce Commission under Texas Education Code, Chapter 133.

Description. Funds will be available for Fiscal Year 2003 (September 1, 2002 - August 31, 2003) to provide funds for programs or occupations within programs not currently receiving funding under the Texas Education Code, Chapter 133. The purpose of the funds is to help pay for classroom instruction for related instruction (apprentice) classes of apprenticeship training programs registered with the Bureau of Apprenticeship and Training. The amount of funding for Fiscal Year 2003 is approximately $80,000 for programs and occupations in programs not currently receiving funding from the Texas Workforce Commission.

Qualifications for Funding. To qualify for funding: 1) each apprenticeship training program or occupation within a program must be certified and registered by the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, no later than August 1, 2002; 2) each apprentice must be registered with the BAT in Texas on or before September 1, 2002; 3) each apprentice must be a full-time paid employee in the private sector in Texas; 4) the number of related instruction hours per class must be certified by the BAT as verified in the program standards of the apprenticeship program; 5) a public school district or state postsecondary institution must act as fiscal agent for the funds pursuant to a contract between the apprenticeship program sponsor and the district or institution; and 6) the related instruction (apprentice) class must start in September 2002 and conduct its fourth class meeting no later than October 5, 2002.

Dates of Program. Each class may not start before September 1, 2002, and must end on or before August 31, 2003.

Planning Allocation of Funds. The statewide total number of estimated contact hours that are submitted to the Texas Workforce Commission will be divided into the amount of funds available to determine a preliminary contact-hour rate, not to exceed $4.00 per contact hour. Planning allocations are made to eligible applicants based on the number of estimated contact hours submitted to the Texas Workforce Commission, multiplied by the preliminary contact-hour rate.

Use of Funds. Funds can only be used for related instruction costs such as instructor salaries, instructional supplies, instructional equipment, and other operating expenses. No more than 15 percent may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

Requesting the Forms to Submit Preliminary Estimated Contact Hours. A package of information explaining the process for submitting preliminary contact-hour estimates and the process for submitting an application may be obtained by contacting the Apprenticeship Support Program at (512) 463-9767 or writing to the Apprenticeship Support Program, Texas Workforce Commission, 101 East 15th Street, Room 252T, Austin, Texas 78778-0001.

Further Information. For additional information, please contact Beverly Donoghue, Apprenticeship Support Coordinator, Texas Workforce Commission, at (512) 463-9767.

Deadline for Receipt of Preliminary Contact-Hour Estimates. The Texas Workforce Commission, Apprenticeship Support Program, must receive preliminary contact-hour estimates for Fiscal Year 2003 apprenticeship training programs no later than 5:00 p.m., Friday, May 31, 2002, to be considered for funding.

TRD-200202402
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: April 17, 2002